4 The market

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Introduction

4.1. This chapter describes the UK market for impulse ice cream. The Commission's 1998 report on BEW provided a detailed description of the market for wrapped impulse ice cream (Chapter 5), the largest part of the impulse ice cream market: not all of the material is repeated here.

Types of ice cream product

4.2. Ice cream products are sold in a great variety of flavours and toppings. The product may be pure ice cream, water ice, fruit sorbet or may be a mixture of these. It may also be a mixture of ice cream and one or more other substance, such as chocolate, wafer, biscuit or caramel. Some products are specifically intended for consumption by children, although this is a declining sector of the market.

4.3. Ice cream products may be differentiated according to how they are packaged as they leave the factory:

(a) wrapped or packaged in individual portions and intended to be eaten hand-held. This includes sticks, bars and individual portion tubs. This category may be subdivided into:

(i) intended for final sale in individual portions (single packed); and

(ii) intended for final sale as multipacks (this is indicated on the packaging);

(b) packed in a tub or other container containing more than one normally-sized portion (which are not separately wrapped or packaged). Again, this may be subdivided according to container size into:

(i) intended for sale in individual portions, by scooping into a cornet, bowl or cup (containers for scoop ice cream would normally be of 5 or more litres volume); and

(ii) intended for sale as it is (for example, in a tub), normally the consumer would take it home and store it in a home freezer for later consumption (such containers would normally be of less than 5 litres volume);

(c) soft ice cream mix, which is frozen and made into ice cream at the point of sale to the consumer (the final product is described as soft ice cream); and

(d) catering-specific products which are individually packaged and are designed to be served as a dessert by restaurants.

4.4. Scoop and soft ice cream may be served as an accompaniment or topping to cakes or coffee (rather than as a snack or dessert of which ice cream forms the main part) but this would not be identifiable from the packaging.

4.5. Ice cream sales may also be classified according to the situation in which the ice cream is eaten:

(a) in the home as part of a meal;

(b) in the home but not as part of a meal;

(c) out of the home as part of a meal; and

(d) out of the home but not as part of a meal.

4.6. Our terms of reference refer to the supply of impulse ice cream which is defined as ice cream purchased for immediate consumption. This limits the supply mainly to ice cream eaten outside the home, although clearly it is possible that the consumer leaves the home specifically to purchase ice cream for immediate consumption at home (for instance, because his or her home freezer is out of stock of the desired ice cream or he/she does not have a home freezer). The term ‘impulse ice cream’ is widely used in the trade and does not include ice cream purchased for consumption as part of a meal. During the course of the inquiry, our terms of reference were amended to exclude ice cream purchased for consumption as part of a meal.

4.7. We have taken the term impulse ice cream to include the following products:

(a) wrapped single packed ice creams (wrapped singles); and

(b) scoop and soft ice cream which is served in a cornet, tub or cup (paragraph 4.3*(b)*(i) and *(c)*) and, in assessing the supply by manufacturers and distributors, the soft mix used by the retailer to make such soft ice cream.

Our survey of ice cream consumers (see Appendix 4.1) found some evidence of multipacks being opened and part of their contents consumed immediately. As our terms of reference refer to ice cream purchased for immediate consumption, we have taken this into account in assessing the existence of any scale and complex monopolies. However, in describing and assessing the market for impulse ice cream we have excluded multipacks for two reasons. First, consumers are only rarely able to substitute multipacks for single packs: in many circumstances that a consumer purchases a single pack no alternative multipack purchase is possible because the outlet does not sell multipacks and there is no other nearby outlet that does so. Second, there are barriers to entry into the supply of single packs that are not present in the supply of multipacks, where a high proportion of sales are by a small number of large retailers selling their own retailer brands as well as manufacturers' brands. The multipack market is discussed further in paragraphs 4.106 to 4.108.

Characteristics of the impulse ice cream trade

4.8. The UK ice cream trade has certain characteristics:

(a) Demand is seasonal, being higher in summer than winter. Demand for impulse ice cream is more seasonal than that for other ice cream,[1] demand in the three summer months being about five times higher than in the three winter months.

(b) Demand (at least in summer in the UK) is further subject to large daily and weekly fluctuations. Weekly fluctuations tend to be unpredictable as the weather is difficult to predict more than a few days in advance.[2]

(c) Ice cream products (but not soft mix) must be maintained in a frozen state if the quality of the product is not to be impaired. This requires a storage temperature of –18°C or below, at all points in the distribution chain including delivery vehicles and at the point of final sale.[3]

(d) Providing the correct temperature is maintained, ice cream products can be stored for long periods (up to two years for most products and 6 to 12 months for products containing biscuit). The cost of holding stock at a large storage centre is about £1.90 per pallet per week, which implies a storage cost (excluding interest) of about 1.4p per year per individual item.[4] Holding stock for long periods at the point of final sale, which required back-up refrigeration, is likely to be more costly. If there is no back-up refrigeration at the point of final sale (for instance, due to space limitations) holding stock for long periods at the point of final sale may well be impractical. Our survey of small retailers (see Appendix 4.2) found that 55 per cent had no back-up refrigeration available.

4.9. Manufacturers tend to build up stocks in late winter and spring and hold them at a central storage centre. Stocks are run down during the summer and the uncertainty of demand, due to the weather, is dealt with by varying the level of production in late summer and the rate of build-up in stocks the following winter. The major manufacturers operate on a Europe-wide basis and fluctuations in UK demand may be offset by variations elsewhere.

4.10. As demand is subject to large daily and weekly fluctuations and storage space at retail outlets is limited, the delivery system needs to accommodate demand fluctuations if retailers' freezers are not to be empty at times of peak demand. In practice, the economic size of the delivery fleet will depend, among other things, on balancing the cost of additional capacity against the probability of selling more impulse ice cream as a result of meeting orders more quickly.

4.11. The distribution of impulse ice cream is characterized by significant economies of drop size and density:[5]

(a) There are economies associated with the amount of products delivered at a particular point (drop size) as costs are largely unaffected by drop size while van capacity is rarely in practice a limiting factor.[1]

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[1]See 1998 report, paragraphs 5.16 and 5.17 and Figure 5.1.
[2]See 1998 report, paragraph 5.18 and Figure 5.2.
[3]Scoop ice cream is held at a higher temperature at the point of sale in order to assist scooping out of the product.
[4]Assumes 1.53 pallets per 1,000 litres and size of 90 ml.
[5]Economies of drop size and density were described in Appendix 5.5 of the Commission's 1998 report.

(b) There are also economies associated with the density of outlets served, as the denser the network served, the less the journey time between deliveries. Mars told us that its mathematical analysis showed that as the number of outlets doubled, the average journey time between deliveries declined by 40 per cent and consequently van operating costs per unit distributed fell.[2]

Drop size and density are affected by a number of factors including retailer demand and storage capacity, the number of different products delivered together in the same van, and frequency of delivery. Some distributors seek to exploit economies of drop size and density by delivering both ice cream and frozen foods and some have vans capable of delivering ambient temperature and chilled foods together with ice cream and frozen food.

Main activities involved in supplying impulse ice cream

4.12. The supply of impulse ice cream to UK consumers includes the following main activities:

(a) Manufacturing and transport from the point of manufacture (which may be outside the UK) to one or more main storage centres. For simplicity, this activity is described as manufacturing and the companies involved (including any importers) as manufacturers.

(b) Distribution from the main storage centre to the point of final sale. Typically, this will be in two stages: the first stage (central distribution) being by large vehicle from the main storage centre to a subsidiary storage centre or cross-dock;[3] the second stage (radial distribution) being from there to the retail outlet, usually in a smaller van. Distribution may be done by the manufacturer (usually using a contractor), or by an independent wholesaler or by the retailer[4] (where the retailer has a nationwide chain of outlets, for example supermarket chains such as Tesco and restaurant chains such as McDonald's). The distribution activity includes: physical delivery of the ice cream; storage at regional centres to accommodate peaks and troughs in demand, and aggregation of orders from a number of outlets. The companies carrying out the distribution activity are referred to collectively as distributors: where the manufacturer or retailer is itself the distributor, it would usually purchase delivery and storage services from third parties.

(c) Final selling to the consumer which may be by a shop, restaurant, cafe, kiosk or mobile van. The outlet may be located within a leisure or tourist attraction. A survey carried out in June 1999 for BEW by ESA Market Research Limited (ESA) suggested that there were about 72,000 establishments selling impulse ice cream that were open to the public. In addition, there are establishments (such as canteens) not open to the public and mobile ice cream vans (of which BEW estimates there are about 5,000 to 6,000). Altogether BEW estimates that there are about 84,000 outlets: this is somewhat less than had been previously estimated (a figure of 100,000 was quoted in the Commission's 1998 report). Our survey of small retailers suggested that ice cream accounts for less than 5 per cent of turnover in 60 per cent of CTNs and grocers, in 72 per cent of petrol stations and in 55 per cent of leisure outlets. The outlets that make the final sale are referred to collectively in this chapter as retail outlets and the companies controlling those outlets as retailers.

4.13. The final sale of soft or scoop ice cream involves the retailer in more activity than the sale of wrapped ice creams. The sale of the latter requires only a freezer, usually self-service, whereas the sale of scoop and soft-serve requires the ice cream to be served into cornets, cups or tubs (which must be purchased by the retailer) and (in some cases) the addition of toppings or other ingredients, implying possible additional hygiene and staff training requirements (obviously more relevant to shops than restaurants). In our survey of small retailers, the top four reasons given for not stocking soft or scoop ice cream were, in order of importance: insufficient space, labour intensive, messy/hassle, no demand.

4.14. As regards branding, ice cream tends to be sold in one of the following ways:

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[1]Appendix 5.5 of the 1998 report stated that in a period of peak demand in 1997, less than 1 per cent of vans dispatched from BEW's Barking depot were full; the rest had space for at least 10 per cent by volume.

[2]Mars estimated that van operating costs per unit distributed would decline by between 10 and 20 per cent (the lower the initial delivery density the greater the journey time between deliveries and hence the greater the decline in unit van operating costs).

[3]A cross-dock is where goods are transferred from a large to a smaller vehicle without storage.

[4]The wholesaler or retailer would carry out the radial distribution, but the manufacturer would usually still carry out the central distribution.

(a) With a manufacturer's or importer's branding.[1] Both the trading name of the manufacturer (for example, Wall's) and the name of the product (for example, Magnum) may convey information to the consumer. BEW told us that in recent years more emphasis had been placed by the major manufacturers on the product brand.

(b) With a retailer's own branding. Supermarkets sell their own brands of take-home ice cream, including multipacks of wrapped hand-held products.

(c) Unbranded, ie without any prominent branding on the packaging or at the point of sale. Soft-serve ice cream is often sold without any prominent branding, as is some scoop ice cream and most ice cream sold in restaurants. In one sense, everything sold by a retailer carries that retailer's branding, so the difference from *(b)* is one of degree and the prominence of the retailer's brand.

As far as impulse ice cream is concerned, wrapped ice cream almost always prominently carries the branding of a manufacturer or importer, scoop ice cream may or may not do so, while soft ice cream rarely does so.

Consumer purchasing behaviour

4.15. Our consumer survey (see Appendix 4.1) found that 36 per cent of respondents (40 per cent of adults and 29 per cent of children) tended to buy most of their impulse ice cream at a specific outlet; the remainder tended to buy ice cream anywhere. The most important reasons for choosing that outlet were: convenience when doing shopping (36 per cent); nearest outlet (34 per cent); cheapest outlet (11 per cent); outlet stocks favourite brand (9 per cent). 29 per cent of adult respondents[2] said that they had at least once chosen an impulse ice cream outlet because they knew ice cream was cheaper there and 95 per cent thought they knew the price of their favourite ice cream.

4.16. Of all the respondents, 45 per cent said that, when they had last bought an impulse ice cream, they had had a choice of outlet from which to buy. When asked how much on that occasion they cared about being able to buy the brand and variety they wanted, 32 per cent cared a lot, 30 per cent a little and 38 per cent not at all. 46 per cent said that there was a brand and variety that they really wanted to buy when they first thought about it and of those, 85 per cent said that they were able to buy it at the first outlet they tried, 9 per cent said that they were not able to and consequently bought a different brand[3] and 2 per cent that they were not able to and consequently went to another outlet[4] (there was no answer from the other 4 per cent). When asked more generally about buying impulse ice cream, 6 per cent said that they would usually try more than one outlet if necessary to find their preferred brand; the remaining 94 per cent either did not have a preferred brand or had a preferred brand but were willing to buy another kind rather than visit another outlet.

4.17. Respondents were also asked whether, in the last month, there had been an occasion when they had been intending to buy impulse ice cream but for some reason decided not to. 27 per cent of respondents (20 per cent of adults and 41 per cent of children) said that there had been such an occasion in the last month (during which respondents may have been intending to buy impulse ice cream on many occasions). 65 per cent of them (47 per cent of adults and 83 per cent of children) bought something else instead: the main products bought were chocolate sweets (24 per cent of those who had been intending to buy impulse ice cream), soft drinks (22 per cent), savoury snacks (11 per cent) and other sweets (9 per cent). When asked about the reasons for deciding to buy something, the main reason given (by 44 per cent of those who bought something else instead) was 'I just changed my mind'. 16 per cent said that they bought something else because the variety they wanted was not available, and 11 per cent because the ice cream was too expensive.

4.18. A survey carried out for BEW by NOP in 1998 approached consumers of impulse ice cream coming out of shops and asked them whether they had considered buying other impulse products. Only 2 per cent had very seriously considered chocolate confectionery, 4 per cent soft drinks and 1 per cent savoury snacks while 10 per cent had fairly seriously considered chocolate confectionery, 13 per cent soft

[1]The brand is usually owned by the manufacturer but may also be licensed to it, for example an ice cream manufacturer (Frederick's) is licensed to use the Cadbury's brand.
[2]Children were not asked this question.
[3]In most cases respondents said that this was because the product was out of stock.
[4]This represented 3 per cent of those with a choice of outlet.

drinks and 4 per cent savoury snacks.[1] The survey also found that few purchasers (5 per cent or less) of these other products had considered purchasing impulse ice cream (either very seriously or fairly seriously).

4.19. The pattern of consumer purchasing behaviour shown by our survey may be summarized as follows:

(a) Consumers usually decide to purchase impulse ice cream before entering the shop (or, where relevant, approaching the ice cream van or kiosk) and do not often give serious consideration to buying other products instead.

(b) About half of consumers have decided which variety of ice cream they want before entering the shop, but are rarely prompted to go to another outlet even if that variety is not available.

(c) Some consumers tend to buy much of their impulse ice cream from one particular outlet. Moreover, consumers tend to know (or at least think they know) the price of their favourite ice cream and have a choice of outlet from which to buy on a substantial minority of occasions.

At a late stage in the inquiry both BEW and Mars told us of surveys they had had carried out during August 1999. BEW's survey was commissioned from BMRB and found that 92 per cent of ice cream consumers were satisfied with the choice of hand-held ice creams available and 8 per cent were dissatisfied. Mars's survey was commissioned from NOP and found that 93 per cent of adults said that they would rather see a range of ice creams made by a number of different manufacturers in their local corner shop's freezer; that 5 per cent said they would rather see ice creams made by a single manufacturer; and that 2 per cent did not know.

Market size and definition

4.20. The value of sales may be measured at three levels:

(a) at MSP, reflecting the activities carried out by manufacturers (manufacturing including, where relevant, importing and central distribution) only;

(b) at distributors' selling prices or retailers' buying prices (RBP), reflecting the activities of manufacturing, central and radial distribution; and

(c) at RSP, reflecting the activities of manufacturing, distribution and final selling by retailers.

4.21. Table 4.1 shows estimates at all three levels:

(a) We have made our own estimates of sales at MSP based on information submitted by the largest manufacturers and our survey of smaller manufacturers (see Appendix 4.3). The estimated value of sales[2] is shown for wrapped single packs, scoop and soft ice cream mix and total impulse[3] (the total sales value of these three categories). Sales of scoop and soft mix have been adjusted to exclude ice cream consumed as part of a meal. The table also shows estimated catering sales (catering-specific products plus that part of scoop and soft mix that is ultimately consumed as part of a meal), and sales of multipacks and other take-home ice cream. For comparison purposes, the table also shows estimates of the value at MSP of all ice cream sales.

(b) We have also made some estimates of the value of sales at RBP and RSP.

(c) BEW, Nestlé and Mars provided us with estimates of the value of sales at RSP. These estimates are based on market audit of ice cream sold in shops, supplemented by other data (for example, from consumer panels)[4] on impulse ice cream sold elsewhere, for example cafes, restaurants and leisure sites. BEW submitted two estimates, one using the same estimation method as previously (these estimates were reported, for example, in the 1998 report and use market audit and con-

[1]The consumers who had considered chocolate confectionery were not necessarily different from those who had considered soft drinks or snacks and vice versa.

[2]BEW's and Nestlé's figures have been adjusted to exclude radial distribution costs. The figures for other manufacturers are based on turnover and, to the extent that they carry out their own radial distribution, this may lead to some slight overestimation of market value.

[3]As noted in paragraph 4.7, we have excluded all multipack sales from impulse sales.

[4]Consumer panels tend to understate consumption as panel members sometimes forget to record their purchases and some categories such as foreign visitors are excluded.

sumer panel data to estimate sales of scoop and soft ice cream as well as wrapped sales) and one using a revised method of estimating scoop and soft-serve sales, based on sales data provided by a supplier of soft ice cream mix.

TABLE 4.1 **Estimates of ice cream market size, 1998**

Basis		*Source*	*Wrapped singles*	*Scoop*	*Soft mix or soft and slush*	*Total impulse**	*Catering*	*Wrapped multipack*	*Other†*	*Grand total: all ice cream*
Commission estimates of value of sales (£m) at										
MSP	UK	Commission	142	21	14	177	23	135	160	496
RBP‡	UK	Commission	178	28	18	225	N/A	N/A	N/A	N/A
RSP§	UK	Commission	320	68	117	505	N/A	N/A	N/A	N/A
Other estimates of value of sales (£m) at										
RSP	GB	BEW¶	299	45	85	429	N/A	272	324	1,025
RSP	GB	BEW¤	299	75	232	606	N/A	272	324	1,202
RSP	GB	Nestlé	250	N/A	N/A	N/A	N/A	290	265	N/A
RSP	GB	Mars	317	N/A	N/A	401	N/A	N/A	N/A	942
Volume of sales (m litres)										
Volume	UK	Commission	N/A	12	10#	N/A	N/A	N/A	N/A	N/A
Volume	GB	BEW¶	37	9	14	61	N/A	92	277	430
Volume	GB	BEW¤	37	13	47	98	N/A	92	277	467
Volume	GB	Nestlé	32	N/A	N/A	N/A	N/A	96	231	N/A

Source: The Commission, BEW, Nestlé and Mars.

*Excluding any multipacks purchased for immediate consumption.
†Ice cream desserts and tubs containing more than one portion of normal size.
‡Assumes 20 per cent wholesale margin for wrapped individual portion and 25 per cent for scoop and soft.
§RSP value of wrapped singles based on BEW estimate for Great Britain uprated to include Northern Ireland. RSP value of scoop and soft ice cream based on Commission volume estimates assuming portion size of 131 ml for scoop and 61 ml for soft mix and average RSP per portion of £0.74 for scoop and £0.65 for soft ice cream.
¶BEW estimate using previous method.
¤BEW revised method. BEW subsequently indicated to the Commission that its assumptions implied a soft ice cream value at RSP of £158 million to £190 million, not £232 million.
#Volume of soft mix. Volume of ice cream would be substantially greater.

4.22. Table 4.1 also shows estimates of the volume (million litres) of impulse and total ice cream sales.

4.23. As shown in Table 4.3, sales of multipacks have increased more rapidly than sales of impulse ice cream or of other take-home ice cream. Over the period of 1988 to 1998, multipack sales doubled, while impulse sales increased by 11 per cent and other take-home sales by 5 per cent.

4.24. In considering the supply of impulse ice cream by manufacturers, it may be useful to separate the wrapped singles market from that for scoop and soft mix. The extent of substitutability between wrapped singles on the one hand, and scoop and soft mix on the other, depends on two main factors:

(a) The willingness of individual retailers to sell scoop and/or soft instead of wrapped if the price of wrapped increases (and vice versa). Relatively few retailers do actually sell both wrapped singles and one or both of scoop and soft: a survey carried out for BEW of establishments selling impulse ice cream in June 1999 found that 88 per cent sold only wrapped and 5 per cent wrapped and one or both of scoop and soft.[1] Leisure and catering outlets were more likely than shops to sell both wrapped and one or both of soft and scoop. Only 3 per cent of shops sold wrapped and one or both of soft and scoop and 94 per cent sold only wrapped. Our survey of small retailers suggested that there were barriers to selling scoop and soft (see paragraph 4.12).

(b) The extent to which retailers, unable readily to substitute scoop and/or soft for wrapped, face competition from other retailers selling scoop and/or soft and the extent to which any such competition would constrain the prices charged by manufacturers of wrapped singles. This depends on the willingness of consumers to switch between outlets to seek a soft or scoop product when only wrapped products are available, and vice versa. As noted above (paragraph 4.16), consumers appear reluctant to try other outlets when buying impulse ice cream.

[1]2 per cent sold wrapped and slush while 4 per cent sold impulse ice cream but did not sell wrapped. The base for these percentages is establishments selling impulse ice cream.

BEW argued that there was close substitutability and quoted, in support, evidence from the Metro Centre in Gateshead where BEW's sales of wrapped singles fell in 1998 by 25 per cent, compared with 17 per cent in the region as a whole, following the opening of McDonald's restaurants selling soft ice cream at the entrances to the Centre. We did not, however, see any evidence of this having an impact on BEW's own prices. BEW acknowledged that prices were set nationally and that there were too few McDonald's sites to affect the national market.

Market shares

Manufacturing

4.25. The four largest manufacturers supplying the UK impulse ice cream market are:

(a) *Unilever* which supplies a full range of impulse ice cream, including all varieties of wrapped products, scoop and soft mix (which Unilever does not currently manufacture but buys from a UK manufacturer of soft mix). Unilever operates an integrated European ice cream business: the majority of Unilever's products are common to other European countries but a few products are unique to the UK or part of the UK. Retailers in Great Britain are supplied by BEW, but most retailers in Northern Ireland are supplied by VdBF-I, Unilever's Irish ice cream subsidiary, rather than by BEW.[1] The Wall's name is not used by Unilever in other European countries but a common ice cream logo is used by Unilever throughout Europe (VdBF-I markets ice cream in Northern Ireland under the HB Wall's name). VdBF-I supplies a similar product range in Northern Ireland to the Irish Republic and this differs slightly from BEW's product range. In 1998 about 25 per cent of BEW's sales of impulse ice cream was imported from Unilever factories abroad and a similar proportion of BEW's production of all ice cream was exported. VdBF-I manufactures ice cream in the Irish Republic, as well as importing from Unilever subsidiaries in other countries including BEW.

(b) *Nestlé*, which also supplies a full range of impulse ice cream (although it buys in from third parties some wrapped products and scoop as well as soft mix).

(c) *Mars*, which supplies a more limited range of mainly adult products from its factory in France.

(d) *Richmond Frozen Confectionery Limited (Richmond)*, whose main business is supplying supermarkets with own-brand multipacks and take-home tubs, but which also supplies a range of impulse ice cream under the Treats brand.

Other suppliers include Dale Farm in Northern Ireland,[2] Häagen-Dazs, and a number of other firms principally supplying scoop ice cream and individual sized tubs (which are included in the wrapped singles category). Our survey showed a total of 68 other impulse ice cream manufacturers with sales of over £20,000 a year. There are a large number of artisanal producers, making ice cream on a very small scale (see Appendix 4.4).

4.26. Table 4.2 shows the four largest manufacturers' market shares. The table suggests that Unilever's UK share of manufacturers' sales of impulse ice cream is about 55 per cent at MSP and its UK share of wrapped singles is about 65 per cent. Unilever's market share in Great Britain is higher than in Northern Ireland: its share of wrapped singles in Great Britain is about 67 per cent and in Northern Ireland it is about 40 per cent, similar to the share of Dale Farm. In relation to the scale monopoly situation, there is some uncertainty concerning the proportion of ice cream sold as part of a meal and of multipacks purchased for immediate consumption. Consequently we carried out sensitivity analyses to assess the impact of including catering sales and a proportion of multipacks in impulse ice cream. The results (see Appendix 4.4) show that Unilever's share remains well over 25 per cent under all plausible assumptions.

[1]BEW does, however, supply some larger retailers and two wholesalers in Northern Ireland.

[2]Express Dairies plc (owner at that time of Dale Farm) announced on 24 March 1999 the closure of Dale Farm's factory. A management buyout continues to sell and market under the Dale Farm name ice cream produced by others and it also distributes Mars's and Häagen-Dazs ice cream products.

TABLE 4.2 **Estimates of ice cream market shares, 1998***

per cent

Company	*Wrapped singles*	*Scoop*	*Soft mix or soft and slush*	*Total impulse*	*Catering*	*Wrapped multipack*	*Other*	*Grand total: all ice cream*
Manufacturers' shares at MSP (source: Commission) in UK								
Unilever*	65	19	0	55	19	26	35	39
Nestlé	11	1	0	9	0	8	2	6
Mars	10	0	0	8	0	22	0	9
Richmond (including Treats)	6	1	0	5	0	7	13	8
Others	8	79	100	24	81	38	50	39
Brands' shares at RSP (source: Commission) in UK								
Unilever*	65	15	2	44				
Nestlé	11	5	6	9				
Mars	10	0	0	6				
Richmond (including Treats)	6	2	1	4				
Others	8	79	91	37				
Brands' shares at RSP (source: BEW previous) in Great Britain								
Unilever (BEW)	70	20	11	53				
Nestlé	10	N/A	N/A	7				
Mars	10	N/A	N/A	7				
Richmond (including Treats)	3	N/A	N/A	2				
Others	7	N/A	N/A	31				
Brands' shares at RSP (source: BEW revised) in Great Britain								
Unilever (BEW)	70	12	4	37				
Nestlé	10	N/A	N/A	5				
Mars	10	N/A	N/A	5				
Richmond (including Treats)	3	N/A	N/A	2				
Others	7	N/A	N/A	51				
Measures of concentration for UK market at MSP								
Share of leading firm	65	19	23	55				
Share of leading 4 firms	92	49	76	76				
HHI†	4,513	766	1,657	3,200				

Source: The Commission, BEW.

*Unilever includes BEW and VdBF-I.

†Herfindahl-Hirschman Index of market concentration: it is calculated as the sum of the square of each company's market above. Measures of concentration for scoop and soft are based on total sales (including those as part of meal).

Notes:

1. Manufacturers' shares at MSP exclude products bought in from other UK manufacturers (this is in order to avoid double counting). If bought-in products were included, Unilever's share of total impulse would increase to 56 per cent, Nestlé's share of wrapped singles would increase to 12 per cent, its share of total impulse to 10 per cent and its share of total ice cream sales to 7 per cent. Other shares would be unchanged.
2. Unilever's UK market share includes sales in Northern Ireland by VdBF-I. BEW's share of Great Britain sales at MSP is estimated at 67 per cent (wrapped singles) and 56 per cent (impulse).
3. Unilever's estimates of brand shares by volume are similar to its estimates of brand share at RSP (there is no more than one percentage point difference in any of the market shares except for scoop where its previous estimate of BEW market share by volume was 16 per cent and its revised estimate 10 per cent).

4.27. Thus, Table 4.2 shows that:

(a) Unilever has a scale monopoly (over 25 per cent) of the supply of impulse ice cream by manufacturers; and

(b) no other company has such a scale monopoly.

4.28. Table 4.2 also shows the estimated shares of sales at RSP held by certain manufacturers' brands. On this basis, all four manufacturers' shares of total impulse sales are somewhat lower, reflecting in particular the higher value of soft ice cream at RSP than of soft mix at MSP. It should be noted that this higher value reflects activity carried out by the retailer or possibly the soft ice cream equipment manufacturer, not the soft mix manufacturer.

4.29. Within the impulse ice cream market, the manufacturing market for wrapped singles is very highly concentrated, while the structure of supply of scoop and soft mix, especially scoop, is less concentrated with no manufacturer having a share as large as 25 per cent. Impulse ice cream as a whole is also highly concentrated, reflecting the very high concentration in wrapped singles and the fact that wrapped singles account for the bulk of impulse.

4.30. Table 4.3 shows manufacturers' brands' shares in Great Britain over time, using BEW's previous method (see paragraph 4.21*(c)*). No other analysis of market shares over time is currently available. The table suggests that BEW's share of impulse sales was somewhat higher in the last five years (1993 to 1998) than the previous five years. BEW's impulse share is affected both by its share of wrapped singles (which decreased from 1988 to 1992 and then increased again) and, given BEW's low share in scoop and soft, the share of wrapped singles in total impulse. BEW told us that wrapped singles had in recent years lost share to scoop and soft, due particularly to expansion of sales by fast-food outlets.

TABLE 4.3 **BEW's estimates of manufacturers' brands' share and market size in Great Britain, 1988 to 1998**

per cent

	1988	*1989*	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*
Wrapped singles											
BEW	67	66	63	60	59	61	62	63	65	70	70
Nestlé/Lyons Maid	23	21	21	18	13	9	11	11	11	10	10
Mars	N/A	1	6	7	8	11	13	15	11	9	10
Others	10	12	10	15	20	19	14	11	13	11	10
Total	100	100	100	100	100	100	100	100	100	100	100
Impulse (wrapped singles, scoop and soft)											
BEW	48	49	49	49	47	49	52	51	54	57	53
Nestlé/Lyons Maid	15	14	15	13	9	6	8	8	8	7	7
Mars	N/A	1	4	5	6	8	10	11	9	7	7
Others	37	36	32	33	38	37	30	30	29	29	33
Total	100	100	100	100	100	100	100	100	100	100	100
							RSP £ million at constant 1998 prices				
Market size											
Wrapped singles	251	322	335	327	300	307	375	411	353	358	299
Scoop	57	64	58	47	49	36	34	39	34	34	45
Soft	77	86	78	63	66	82	78	91	79	80	85
Total impulse	385	472	471	437	415	425	487	541	466	472	429
Multipack	140	178	194	188	185	181	210	235	252	249	272
Other take-home	310	330	338	330	338	355	342	370	359	352	324
Weather index*	99.3	120.8	123.7	104.7	103.1	94.9	102	117.3	98.6	102.7	94.7

Source: BEW, based on data from A C Nielsen and T N Sofres (formerly AGB).

*A figure below 100 indicates cooler than average; a figure above 100 warmer than average.
Note: Figures are estimated market shares by value using BEW's previous method (see paragraph 4.21*(c)*). Shares by volume are similar.

Distribution

4.31. The companies acting as radial distributors of impulse ice cream include:

(a) BEW and Nestlé which are vertically integrated in this respect (see paragraphs 4.38 to 4.41);

(b) national frozen food wholesalers: there are some half dozen national wholesalers of impulse ice cream, including Snowking and Brakes; and

(c) local wholesalers, including the ex-dedicated distributors and others, some of which are also manufacturers of ice cream.

As mentioned above, radial distribution of impulse ice cream may also be carried out by the retailers and some retailers may collect their impulse ice cream from cash-and-carry warehouses.

4.32. Table 4.4 shows market shares in wrapped singles of the different distributors, where the distributor is the company acting as principal in the distribution activity (with title to the ice cream) and may be a manufacturer, wholesaler or retailer. Table 4.4 suggests that in 1998 Unilever's share in the distribution of wrapped singles was about 33 per cent of which VdBF-I's deliveries in Northern Ireland accounted for 2 per cent and BEW's deliveries the remainder. This includes deliveries where BEW carried out only a central distribution function (mainly to mobilers): excluding these deliveries would reduce Unilever's share to about 28 per cent.[1]

TABLE 4.4 **Shares in UK distribution of wrapped singles, 1998**

	Total %
Manufacturers distributing their own ice cream:	
Unilever (BEW and VdBF-I)	33
Nestlé	7
Other manufacturers*	3
Total manufacturers	44
BEW's dedicated distributors†	17
National wholesalers‡	22
Other distributors§	17
	100

Source: The Commission based on information provided by manufacturers and distributors.

*Including Mars and Treats.

†Indirect sales only. The dedicated distributors also took orders and delivered BEW's direct sales outside the M25 (included under BEW).

‡Companies distributing ice cream manufactured by others throughout Great Britain or the UK.

§Includes regional wholesalers, cash and carry, retailers and mobilers.

Note: Estimates based on distributors' turnover at RBP as percentage of UK market at RBP, where turnover excludes any deliveries as an agent for an ice cream manufacturer. Retailers to which BEW distributes itself tend to purchase BEW's wrapped singles at lower prices than other retailers. This has the effect of reducing BEW's (and hence Unilever's) share in distribution compared with what it would be on the basis of turnover at list price or ice cream volume.

4.33. There is little information available on distributors' shares for scoop and soft, although small manufacturers of scoop ice cream generally distribute their own ice cream within the vicinity of their plant. Using the breakdown of distributors in Table 4.4, the bulk of scoop and soft ice cream is distributed by other manufacturers and other distributors. Relatively little scoop and soft is distributed by Unilever, Nestlé, the ex-dedicated distributors or the national wholesalers. Based on the breakdown of sales at list price in Table 4.7, we estimate that Unilever's share of supply of the reference goods by distributors in 1998 was between 26 per cent (excluding BEW's sales to the 'mobilers' and 'other' categories in Table 4.7) and 31 per cent (including such sales). Customers classified by BEW as 'mobilers' or 'other' may be either wholesalers or retailers and we cannot be certain as to the proportion of such sales to wholesalers and the proportion to retailers. For March to August 1999, we similarly estimate that Unilever's share was between 23 and 27 per cent.[2] The figures are sensitive to the method of computation: Unilever's 1998 share as a distributor would be lower by 2 to 3 per cent if its share was calculated on the basis of turnover at RBP (as in Table 4.4—see note to that table) rather than turnover at list price.[3]

Retailing

4.34. There is no evidence that any retailer has a scale monopoly.

4.35. Table 4.5 shows an approximate breakdown of wrapped singles and total impulse ice cream sales by type of outlet. Table 4.5 suggests that shops account for around 70 per cent of wrapped singles sales and 55 per cent of total impulse, while other outlets (mobile vans, kiosks, catering) account for the remainder. Table 4.5 is based mainly on survey data and may understate somewhat the share of the other outlets, particularly kiosks and catering, where consumers not covered by the survey, such as foreign tourists, are most likely to purchase ice cream.

[1]The share of other manufacturers shown in Table 4.4 may also be affected.

[2]These estimates (1998 and March to August 1999) assume that BEW's share of the UK market is 53 per cent and VdBF-I's share is 2 per cent and include BEW's sales via Wall's Direct, Barking, dedicated distributors direct (in 1998 only), and (for the higher figure) mobilers and other plus all of VdBF-I sales.

[3]Unilever's 1999 share may also be affected: data on BEW's 1999 discounts (off list price) to retailers is not currently available.

TABLE 4.5 **Breakdown of impulse ice cream sales by type of outlet (Great Britain, 1998)**

per cent

	Wrapped single packed	*Total impulse*
Independent CTNs	15	12
Multiple CTNs	6	4
Total CTNs	21	17
Independent grocers	19	15
Forecourts	13	10
Other shops	16	13
Mobile vans	19	30
Kiosks*	8	11
Catering	3	4
Total	100	100

Source: Appendix 4.5.

*Including cinemas.

Share of manufacturers' brands by type of outlet

4.36. Appendix 4.5 shows an analysis of the market shares of manufacturers' wrapped singles brands by type of outlet in Great Britain. The appendix shows that BEW's market share is highest in independent CTNs, kiosks and catering outlets, while Mars's market share is highest in multiple CTNs and other shops (also mainly multiples). Nestlé's market share is also highest in multiple CTNs. Richmond's (Treats') share is highest in mobile vans, but this may not be fully reflected in the data in Appendix 4.5, particularly for 1998. In general, the figures in Appendix 4.5 are likely to be subject to considerable margins of error, and to overstate somewhat the share of the best known manufacturers' brands.[1]

4.37. As shown in Table 4.6, BEW's share of total impulse sales by outlet type differs from its share of wrapped singles as sales of scoop and soft ice cream are concentrated in certain outlet types. As with Appendix 4.5, the figures are likely to be subject to considerable margins of error, and to overstate somewhat the share of the best-known manufacturers' brands.

TABLE 4.6 **Market share of BEW's brands at RSP (Great Britain, 1998)**

per cent

	Wrapped singles	*Total impulse*
Independent CTNs	82	75
Multiple CTNs	59	59
Total CTNs	75	71
Independent grocers	71	70
Forecourts	64	64
Other shops	55	52
Mobile vans	75	39
Kiosks*	84	47
Catering	85	59

Source: Appendix 4.5.

*Including cinemas.
Note: BEW's share of scoop and soft is assumed the same (7 per cent) in each outlet type.

Vertical integration

4.38. Large retailers (including supermarkets) sometimes deliver to their outlets from a central dispatch point, the manufacturer delivering to that point. In these cases, there is consequently integration of radial distribution and the final selling activity with no involvement of an independent wholesaler. Some

[1]Survey data may understate the share of less well-known products in non-self-service outlets (the consumer may ask for a Magnum, be given a similar product and not recognize the difference).

wholesalers sell directly to consumers from their own mobile van fleet and this is another instance of integration between distribution and final selling.

4.39. There is also considerable integration between manufacturing and radial distribution. Since 1 March 1999, BEW has offered a contracted-out radial distribution service for Wall's ice cream in all of Great Britain except the Scottish Highlands and Islands. (Prior to 1 March, BEW's radial distribution service was only offered from its Barking depot to all retailers in and around London within the M25 area; in other areas it acted as principal in the distribution activity only in sales to certain retailers which at that time were known as BEW's direct customers.) Order-taking and delivery to these and other customers outside the M25 area was carried out by the dedicated distributors. BEW told us, prior to the implementation of the new system, that it expected the new distribution operation outside the M25 (Wall's Direct) to account for between 33 and 47 per cent of its 1999 impulse ice cream sales, while the existing Barking operation accounts for about 10 per cent, suggesting that a projected total of 43 to 57 per cent of BEW's impulse ice cream sales will be delivered by the integrated operation. These projections imply that BEW's share of radial distribution would be between 24 and 31 per cent on the assumption of a continued 55 per cent market share in manufacturing. As shown in Table 4.7, during the six months March to August 1999, Wall's Direct and Barking accounted for 38 per cent of BEW's sales at list price. The remainder of BEW's ice cream is either sold to independent wholesalers or is delivered direct to mobilers or retailers' central cold stores. The terms BEW offers to independent wholesalers are discussed below. VdBF-I distributes all its own impulse ice cream in Northern Ireland. About 70 per cent of VdBF-I's distribution is through an in-house van selling operation and the remainder by a contract distributor that mainly covers the west of Northern Ireland. The contract distributor handles a wide range of different manufacturers' frozen products although the only ice cream it handles is Unilever's. VdBF-I told us that it does not supply wholesalers because the two major wholesalers in Northern Ireland obtain their supplies from BEW.

TABLE 4.7 **Breakdown of BEW's impulse ice cream sales (at list price) by method of delivery**

	March to August 1999		
	Sales at list price	*Percentage of total*	*1998 percentage of total*
Wall's Direct	35.1	29	-
Barking	12.3	10	10
Dedicated distributors—direct	-	-	35
Dedicated distributors—indirect	-	-	25
Independent wholesalers	61.6	51	21
Ex-dedicated distributors*	35.6	30	-
National wholesalers†	16.8	14	16
Other	9.2	8	5
Mobilers	9.2	8	9
Other	1.7	1	‡
Total	119.9	100	100

Source: BEW.

*During the course of July 1999, three of the ex-dedicated distributors stopped trading as independent wholesalers. Consequently, ex-dedicated distributors' share is likely to be lower in the months after July.

†Those wholesalers purchasing over £7.5 million from BEW in 1998 (see paragraph 4.70).

‡Included in Barking figures.

Note: August 1999 figures provisional.

4.40. The bulk of BEW's distribution operations are contracted to third parties. In the new Wall's Direct operation, which was set up following an open tender process in which all potential providers were able to participate, delivery and storage are contracted to a number of different third parties and telephone selling is also contracted out to a single centre in Milton Keynes. In the Barking operation, delivery and storage are contracted to a third party but telephone selling is done by BEW staff at its Gloucester factory.[1] BEW provides the Wall's liveried vans used by its contractors to transport ice cream to retail outlets and BEW told us that it will not allow these to be used for the delivery of other ice cream brands or for Wall's ice cream not sold through Wall's Direct (for instance, by a BEW contractor who also operates as an independent wholesaler). The sales function is carried out by a combination of BEW's own employees and FMCG Ltd sales staff. BEW estimated that about 25 per cent of those outlets taking

[1]The same telephone number is used but calls from the M25 area are automatically diverted.

deliveries from Wall's Direct are serviced by van sales: in these cases the van calls at the outlet, takes the order, immediately fills it from stock held in the van, issues an invoice or delivery note and takes the money, if it is a cash customer. The van driver may also help with customer care and merchandising. BEW described van selling as the 'gold standard' service and it is provided in certain geographic areas which have high or fluctuating demand patterns, for example city centres, beaches and tourist sites. In the remaining 75 per cent of outlets, orders are taken by telephone sales staff for next-day delivery and an invoice is issued which may be satisfied by cash or credit.

4.41. Nestlé also has integrated manufacturing and radial distribution for most of the UK. Telephone selling is done by Nestlé staff; delivery is contracted to a third party (Brakes) that is also a national wholesaler and is therefore able to effect delivery from its own delivery rounds. Nestlé ice cream is delivered in Brakes' vans, which are not exclusive to Nestlé products. Different arrangements apply to Nestlé deliveries in the M25 area and in North Wales: Nestlé has appointed a non-exclusive distributor in each of these areas to serve retailers. The non-exclusive distributors provide (as Nestlé's agents) storage and delivery for Nestlé ice cream supplied to outlets of national retailers in these areas and act as a wholesaler for Nestlé ice cream to retailers all of whose outlets are wholly within these areas. Nestlé also supplies independent wholesalers. Direct distribution accounts for about 74 per cent of Nestlé's sales, the non-exclusive distributors 4 per cent and wholesalers 22 per cent.

4.42. Mars does not carry out the radial distribution of its own ice cream except through a small van selling operation that commenced on a trial basis in 1999 (Mars informed us that it did not intend to continue its van selling operation). Consequently, the radial distribution of most Mars ice cream is carried out by independent wholesalers.

4.43. Other manufacturers often deliver in the neighbourhood of their factory and may also have their own cash-and-carry operation. Dale Farm distributes its ice cream to retailers in Northern Ireland through a network of franchised self-employed van operators which do not carry ice cream brands other than those distributed by Dale Farm (Dale Farm's own brand, Mars and Häagen-Dazs) and lease their vans from Dale Farm.

4.44. The major manufacturers are not involved in retailing (except in the case of vending machines which are a very minor aspect of the impulse ice cream market). Smaller manufacturers may operate some mobile vans, kiosks or cafes.

Exclusivity required by manufacturers

4.45. Manufacturers may have arrangements with distributors and/or retailers under which the latter agree not to stock or sell competing brands of ice cream at all or to some extent. Where full exclusivity is agreed, this will usually be in exchange for other benefits such as more favourable terms as described below.

Exclusivity in distribution

4.46. Prior to 1 March 1999, BEW had agreements with a number of companies, known as dedicated distributors, that required those companies not to deliver products competing with Wall's ice cream.[1] These agreements have now been terminated and most of BEW's former dedicated distributors have become independent wholesalers. Eight of the former dedicated distributors became contractors to Wall's Direct. BEW does not prevent them from carrying on parallel wholesaling activities and a number do so.

4.47. As noted above, BEW does not allow its contractors in its current distribution operation to carry competing ice cream brands (or Wall's ice cream not ordered through Wall's Direct) in BEW's vans.[2] This has the effect of preventing delivery of competing products together with BEW's products by the Wall's Direct delivery network.

4.48. Nestlé has agreed with its two smaller non-exclusive distributors (but not Brakes) that they will not distribute BEW ice cream but there is no restriction on their distributing other ice cream brands.

[1]Other than with BEW's permission, which was only granted exceptionally.
[2]Wall's Direct contractors are free to operate separate wholesaling operations which carry Wall's and other manufacturers' ice cream in other vehicles.

Franchising of mobiler retailers

4.49. BEW has appointed a number of mobiler retailers as its franchisees. Franchisees operate Wall's liveried vans and are required not to sell competing ice cream products from them, although if manufacturers themselves, they are permitted to sell their own make of scoop or soft ice cream. In exchange franchisees are granted an exclusive territory for street trading from Wall's liveried vans and/or exclusive rights to sell Wall's ice cream at specified events from Wall's liveried vans, ie BEW agrees not to permit another mobiler to put its vans in Wall's livery on the same basis in that territory. BEW restricts its franchisees from actively seeking customers in the territory of another franchisee, but permits them to make sales to such customers if approached by the customer. They also benefit from more favourable terms for Wall's ice cream than other mobile operators (see note to Table 4.15 regarding target scales) and have their vans painted in Wall's livery at BEW's expense. At the end of August 1999 there were 370 vans and trailers within the Wall's franchise out of an estimated UK total of 5,000 to 6,000 mobile vans. [*Details omitted. See note on page iv.*] VdBF-I does not have franchised mobiler retailers.

4.50. Nestlé currently has 50 mobiling franchisees with about 200 liveried ice cream vans and will have 300 liveried vans by the start of the 2000 season. It plans a further 300 liveried vans during the 2000 season. Nestlé's franchisees are required to stock in their liveried vans Nestlé products exclusively.

Outlet exclusivity

4.51. The 1979 Commission report found ice cream outlet exclusivity against the public interest, except in the context of franchising agreements.[1] The main manufacturers subsequently gave undertakings not to enter into agreements for outlet exclusivity except at the retailer's written request (see Appendix 3.1). This exception was not a part of the Commission's recommendations and BEW told us that this was because the DTI accepted the argument that suppliers should be free to respond to certain types of retailer, for example local authorities with control of a beach site, to sell the rights to the business to a single supplier. Outlet exclusivity may relate to all impulse ice cream or separately to wrapped and scoop or soft ice cream (in some cases one manufacturer exclusively provides wrapped ice cream and another exclusively provides scoop ice cream).

4.52. BEW told us that, at the retailers' request, it had such agreements with 46 larger retailers at the end of 1998. These are summarized in Table 4.8. Contract length is fixed in most of these agreements and is between one and five years. A few of the contracts are on rolling or open terms, but these will normally have a notice period built in. Table 4.8 suggests that the outlets concerned accounted for about 7 per cent of BEW's impulse ice cream sales in 1998. Most of the agreements are with leisure sites: BEW's Annual Contract for 1999 states that its strategy for the leisure channel is to 'secure long term solus deals (at customer's request of course!)'. BEW also has outlet exclusivity agreements with other retailers including chains of CTNs and motorway service areas—in relation to which BEW's 1999 Annual Plan states that its strategy is to 'invest to prevent competitors gaining critical mass in Motorway Service Areas—a key channel for visibility'. BEW told us that since 1 January 1999 it had made a further ten exclusive agreements but had lost exclusive contracts with four of the retailers included in Table 4.8: the net effect was to increase the value of BEW's sales at list price to outlets covered by exclusive deals from £9.3 million, shown in Table 4.8, to £10.6 million. VdBF-I told us that it had not negotiated any exclusive outlets in Northern Ireland.

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[1]This finding was limited to what was described as the traditional trade and did not apply to grocery or catering outlets.

TABLE 4.8 **BEW's 1998 sales to outlets which agreed to sell only BEW's impulse ice cream**

	Number of retailers*	Total GSV £m	Estimated GSV (£m) of sales for agreements of duration One year†	Two years	Three years	Four years	Five years
Leisure	33	3.2	0.4	0.5	1.4	0.5	0.6
Retail	11	3.6	1.2	1.0	1.4	0	0.1
Travel	3	2.5	1.3	0	0	1.2	0
All	46	9.3	2.9	1.5	2.7	1.6	0.7

Source: BEW.

*Includes agreements where duration was not specified.
†Retailers may operate more than one outlet.
Note: Exclusivity may relate to wrapped singles or all impulse.

4.53. Retailers request agreements with outlet exclusivity in the expectation of receiving more favourable terms from BEW than in the absence of outlet exclusivity. In this context, there are a number of aspects to the terms negotiated between BEW and the retailer (negotiations cover these aspects whether the account is exclusive or not):

(a) discount off list price (sometimes known as an off-invoice discount);

(b) targeted overrider discounts and/or rebates, which are paid on achieving certain sales levels of Wall's ice cream. In some cases, a guaranteed overrider is offered, which is not dependent on achieving given sales levels and consequently similar to the discounts in *(a)*; and

(c) payments by BEW (in money or in kind) to the retailer: these may take a number of forms, including promotional or marketing support, merchandising allowance and free provision of items, such as kiosks, tricycles and bins that BEW normally charges for.[1] Promotional support may include sponsorship of visitor attractions at theme parks. Payments may be made either at the beginning of the contract or annually, with the annual payments made either at the beginning, during or at the end of the year.

4.54. BEW provided us with its documentary record of its negotiations with nine retailers with which outlet exclusivity was agreed during 1998/99. However, in only one of these (Granada Motorway Services) did the documentation cover negotiations on both an exclusive and a non-exclusive basis. As shown in Appendix 4.6, BEW's offer for exclusive supply was on substantially more favourable terms (total discount of 43 to 45 per cent of list price including overriders, promotional and marketing payments) than its offer for non-exclusive supply (total discount of 20 to 24 per cent of list price). Our analysis suggests that the expected cost to BEW of the lower price in its exclusive offer was not fully offset by expected benefits from higher volume. Consequently it appears that part of the benefit to BEW from achieving an exclusive deal with Granada reflected the visibility advantages perceived by BEW in having its brand and not rival brands available in these outlets.

4.55. Nestlé told us that it has agreements with outlet exclusivity with 12 leisure operators, and a small number of other exclusive arrangements, also in the leisure sphere, all of which are less than £30,000 in value. The outlets concerned accounted for about 12 per cent of Nestlé's sales in 1998 (one leisure operator alone accounted for over half of the 12 per cent). The duration of Nestlé's agreements was between one and five years. Mars also has such exclusive agreements and told us of agreements with 14 retailers of between one and three years' duration.[2] We are also aware of at least one exclusive agreement involving a smaller manufacturer.

Freezer exclusivity

4.56. BEW, Nestlé, Mars and about 30 other manufacturers provide freezer cabinets to retailers on condition that all or part of the space in the freezer is used to stock only their own ice cream. The retailers are loaned the freezers, free of charge,[3] and the manufacturer pays for maintenance and rectifying

[1]In addition BEW normally provides free-on-loan freezers to the relevant outlets.
[2]Mars did not know the total sales of these retailers, all of which were supplied through wholesalers.
[3]Retail outlets with BEW freezers, which are on BEW's standard terms, may receive lower end-of-year bonuses from BEW than if they had their own freezer. This applies also to Nestlé.

mechanical breakdowns and other failures. BEW, Nestlé and Mars do not restrict the distributor used to deliver impulse ice cream stored in their freezers.

4.57. BEW's freezers are provided on the basis that all of the freezer's space is reserved for BEW products.[1] The installation of a BEW freezer does not prevent an outlet from selling competing manufacturers' impulse ice cream in other freezers. BEW's freezers are provided for a minimum period of a year; after the initial one-year period, either BEW or the retailer may terminate the arrangement with one month's written notice. The life of a freezer is about ten years and most of BEW's freezers are more than one year old: thus in most outlets it is contractually possible for the retailer to ask for the removal of BEW's freezer on one month's notice and install a multi-brand freezer or an alternative exclusive freezer (BEW told us that its freezers were usually removed within a few days of the retailer's request whether or not this was within the initial one-year period, and its target for removals was five days). Additionally, a retailer with one BEW freezer has the option of adding an additional freezer or (if space is limited[2]) replacing the BEW freezer with two smaller ones. At the end of 1998, BEW had provided about 87,000 freezers. VdBF-I has about 1,750 exclusive display and storage cabinets in Northern Ireland.

4.58. Nestlé provides exclusive freezers on similar terms to BEW, and Nestlé, too, told us that it did not enforce the initial one-year loan period and that its freezers were returnable at the will of the retailer. Nestlé also provides larger outlets with partially exclusive freezers where less than 100 per cent of the space is reserved for Nestlé products. At the end of 1998, Nestlé had provided about 20,000 freezers.

4.59. Mars also provides fully exclusive freezers but, in larger outlets, prefers to provide partially exclusive 'industry' freezers, in which typically 40 per cent of the space is reserved for Mars products. At the end of 1998, Mars had provided about 11,000 partially exclusive freezers and 25,000 exclusive freezers.

4.60. We heard from about 30 other manufacturers providing fully or partially exclusive freezers, accounting for about 10 per cent of 1998 impulse sales; in 1998 they had provided about 9,500 exclusive freezers and about 500 partially exclusive freezers.

4.61. Some ice cream manufacturers (including Mars and Nestlé) contribute to the cost of wholesaler-provided freezers on condition that a specified percentage of the freezer is stocked with that manufacturer's ice cream. BEW's policy is not to make any such contributions (although it has done so on occasions in the past at the request of the retailers).

4.62. Treats sells freezers to retailers, with an offer of free Treats ice cream to the value of the freezer, and the freezer is then delivered already stocked. This practice has some similarity to that of freezer exclusivity during the period (which may, however, be short) between delivery of the already stocked freezer and the time when all the ice cream in the freezer has been sold to consumers (because the retailer has no ready alternative to selling the ice cream to consumers and the freezer cannot be stocked with other ice cream until some of the delivery stock has been sold).

4.63. Our survey of independent retailers (see Table 4.9) suggests that 65 per cent of CTNs and grocers and 74 per cent of petrol stations have only one freezer.[3] This represents a decline from the 74 per cent shown in the Commission's 1993 report.

[1]Unless BEW is unable to supply its own ice cream, when the retailer is free to stock similar competing products on a 'line by line' basis (this was one of the undertakings BEW agreed to following the 1979 Commission report).

[2]Our small retailer survey suggested that 20 per cent or fewer of those with one exclusive freezer had space for a second one.

[3]The ESA survey for BEW suggested that 82 per cent of all outlets, including 79 per cent of independent CTNs/grocers and 82 per cent of petrol stations, had only one freezer. The figures for independent CTNs and grocers and for petrol stations are higher in the ESA survey than in our survey: this may be because the ESA survey captured more smaller outlets or because retailers in our telephone survey incorrectly included freezers selling take-home ice cream or other frozen food. Similar factors would affect the Commission's 1993 and 1998 surveys: the ESA results would not be comparable to those from these earlier surveys.

TABLE 4.9 **Independent retailers: number of freezer cabinets in front of store**

per cent

Coverage	*1993 CTNs Convenience Petrol stations*	*1998 CTNs Convenience*	*1999 CTNs Convenience*	*1999 Petrol stations*	*1999 Leisure*
One	74	66	65	74	62
Two	24	27	28	21	30
Three or more	3	7	7	5	8
Outlets with a manufacturer-owned freezer	64		67	61	65
Of which: Unilever	45		49	54	43
Nestlé	13		15	8	18
Mars	7		17	7	8
Outlets without a manufacturer-owned freezer	36		33	39	35

Source: Commission survey.

The most marked change shown in Table 4.9 is an increase in the percentage of outlets with a Mars freezer (which will often be a second freezer), but there have also been increases in the percentage of outlets with BEW and Nestlé freezers. Some further information is provided in Table 4.10: 28 per cent of outlets have only a BEW freezer,[1] while 19 per cent of outlets have a BEW freezer as the main impulse ice cream freezer and one or more other impulse ice cream freezers (in some of these, the second freezer may be storing primarily frozen food). Only 36 per cent of independent CTNs and 26 per cent of independent grocers said that they had only one freezer which was fully exclusive: these figures are, however, affected by the fact that 21 per cent and 13 per cent respectively of those with BEW freezers were apparently not aware that they were fully exclusive. At the time of the Commission's 1993 survey, a higher proportion (36 per cent) of respondents said that they had one freezer which was fully exclusive.

TABLE 4.10 **Breakdown of independent retailers' freezer ownership**

per cent

	1999 CTNs Convenience	*1999 Petrol stations*	*1999 Leisure*
One freezer, owned by:			
Shop	24	29	19
Unilever	28	36	27
Nestlé	6	3	6
Mars	5	2	4
More than one freezer: main impulse ice cream freezer			
Shop	9	3	8
Unilever	19	19	15
Nestlé	3	0	8
Mars	3	0	0
Other	5	8	13
Total	100	100	100
Analysis of second freezer ownership in shops with more than one freezer, main freezer BEW-owned			
Shop	7	6	1
Unilever	1	7	8
Nestlé	4	2	2
Mars	6	3	2
Other	1	0	2
Total	19	18	15

Source: Commission survey.

[1]The ESA study showed that 34 per cent had only Wall's freezers.

4.64. About 60 per cent of independent CTNs/grocers and petrol stations and 30 per cent of leisure sites with only one exclusive freezer said that they would stock more brands if the freezer was not exclusive: this represents about 16 per cent of all CTN/grocer respondents, 21 per cent of all petrol station respondents and 8 per cent of all leisure respondents. Small retailers were also asked what they would do if their exclusive freezer was not available. About 8 per cent of CTN/grocer and petrol station respondents and 21 per cent of leisure respondents with exclusive freezers said that they would stop selling ice cream: this represents about 3 per cent of all respondents for CTN/grocers, 4 per cent for petrol stations and 6 per cent for leisure sites.

4.65. Table 4.11 shows some information on the freezers installed in the outlets of larger retailers. This was obtained from questionnaire responses (see Appendix 4.3) and it should be noted that respondents are not necessarily representative of all larger retailers. Table 4.11 suggests that the majority of freezers are obtained free-on-loan and are not owned by larger retailers. The majority of CTN chain respondents said that their freezers were either partially exclusive or non-exclusive, while in grocers and particularly leisure sites the majority of freezers were exclusive. Larger retailers negotiate with manufacturers on terms and freezer provision may be regarded as one aspect of these negotiations.

TABLE 4.11 **Impulse ice cream freezer installed in large retailers' outlets**

per cent

	CTNs	*Grocers**	*Petrol stations*	*Leisure sites*	*Others*	*All outlets*
Retailer-owned	15	22	52	5	6	16
Rented	0	0	0	7	0	1
Free-on-loan:						
Exclusive	29	52	48	87	17	45
Partially exclusive	8	26	1	2	0	10
Non-exclusive	49	0	0	0	77	28
Total	100	100	100	100	100	100

Source: Responses to Commission questionnaires.

*Includes supermarkets, co-ops and smaller chains.

Other

4.66. BEW has agreed with four retailers that a certain proportion of space in their non-BEW-provided freezers is reserved for Wall's impulse ice cream. The retailers involved are Shell UK (90 per cent of space reserved for BEW), Martins/Forbuoys (55 to 60 per cent), Woolworth (40 per cent) and Alldays (30 per cent). Nestlé told us of agreements it has made with the first three of these retailers (Nestlé provides freezers to Alldays with part of the space reserved for Nestlé ice cream) and also with Esso Snack & Shop.

Exclusivity required by distributors

4.67. Some wholesalers provide freezers on condition that the freezer is stocked with goods delivered by that wholesaler. Typically these goods cover a range of manufacturers' products. Wholesalers providing freezers account for less than 25 per cent of impulse ice cream deliveries to retailers.

Terms offered by manufacturers to independent wholesalers

4.68. Manufacturers publish price lists for impulse ice cream products. The price lists show a price at which retailers may buy ice cream (the list price). Wholesalers are offered a reduction on the list price (usually a percentage of the list price) to cover their costs and profit. Additionally manufacturers may show on their price lists RRPs, based on a notional retailer's profit margin (for a retailer buying at list price and selling at RRP). This notional profit margin is about 23 per cent of RRP for BEW, Nestlé and Mars.

BEW[1]

4.69. Following the Commission's 1998 report, BEW's undertakings required it to trade with independent wholesalers on wrapped singles on standard published terms and to ensure that retailer discounts/bonuses were not conditional on obtaining supplies from dedicated distributors. The undertaking does not apply, however, to wholesalers with whom BEW did more than £7.5 million of total ice cream and frozen food business in 1998, to whom BEW may offer more favourable terms. Table 4.12 shows BEW's published terms for 1999:

(a) Wholesalers receive a standard distribution deduction of £1.10 per unit (£1.48 per unit in the north of Scotland[2]). A unit contains a specified number (varying between products) of wrapped ice creams. The value of the standard distribution deduction averages about 9.5 to 10 per cent[3] of list price but the percentage varies between products according to the list price of a unit, tending to be lowest for high value to volume products such as Solero and highest for inexpensive or bulky products.

(b) The published terms provide for wholesalers to receive at the end of the year performance-related bonus payments on sales to retailers on BEW's standard or seasonal terms (indirect sales). In particular, wholesalers receive bonus payments of between 1 and 5 per cent of net invoice value (list price less distribution deduction) in 1999 if their indirect sales (at list price) exceed 50 per cent of their 1998 indirect sales. As shown in Table 4.12, wholesalers qualify for the full 5 per cent payment if their 1999 indirect sales exceed 90 per cent of 1998 indirect sales. BEW told us that the target percentages were lower than in 1998 in recognition of new competition from Wall's Direct. BEW told us that in future years the sales growth target scales will be calculated in the knowledge of actual volumes sold in the previous year. In 1999, wholesalers' ability to achieve the target percentages will depend among other things on how they are affected by competition from Wall's Direct. Additionally, some wholesalers are affected by BEW's change in its definition of indirect sales and consequent reclassification of some indirect accounts as direct accounts (see footnotes to paragraph 5.34). BEW told us that it had identified 45 retailers, previously classified as indirect accounts who received off-invoice discounts and who had consequently been reclassified as direct accounts: these retailers represented 1.1 per cent of indirect sales through the dedicated distributors in 1997, although the percentage for individual dedicated distributors varied from zero in most cases to 19 per cent (for one dedicated distributor). BEW accepted that there might have been some other indirect accounts receiving off-invoice discounts that it had not identified and noted additionally that retailers moved from direct to indirect (and vice versa) when they joined (or left) buying groups to which BEW offered off-invoice discounts.

(c) The extent of remuneration ultimately received by wholesalers is uncertain at the beginning and during the year as it depends on the bonus payments which are themselves dependent on factors beyond the wholesalers' control, including market growth, the weather and BEW's decisions regarding its 'Strategic Products' which affect the strategic product payment (see Table 4.12). Consequently, the arrangements transfer risk from BEW to ice cream wholesalers.

(d) BEW delivers its ice cream to wholesalers (or they may collect it from the appropriate BEW cold store) and the published terms do not reflect any differences in BEW's transportation costs between wholesalers.

The published terms to wholesalers do not apply to soft mix or scoop ice cream. BEW told us that from 1 March 1999 it had offered most wholesalers a 20 per cent discount off list price for all scooping and soft mix products (some benefit from larger discounts).

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[1]VdBF-I does not currently supply wholesalers.
[2]On 22 July 1999 the OFT agreed a variation to BEW's undertakings allowing BEW a higher £1.48 distribution deduction on all sales in the north of Scotland since 1 March 1999.
[3]We estimated an average list price per unit of £11.26 on the basis of the 1998 product mix and 1999 list prices and unit sizes. BEW's actual average list price per unit for January to July 1999 was £11.49.

TABLE 4.12 **BEW’s standard terms to wholesalers**

BIRDS EYE WALL’S LTD (BEW)
WALL’S ICE CREAM—Terms for wholesalers 1999
STANDARD TERMS AVAILABLE TO WHOLESALERS FROM BEW
ON PURCHASE AND DISTRIBUTION OF WRAPPED IMPULSE ICE CREAM IN 1999

Distribution Deduction £1.10 per traded unit
Paid off invoice per traded unit purchased from BEW

Year End Performance Payments
Paid in 2000—relating to purchases from BEW and sales in 1999

*Sales growth payment**		*Season extension payment**		*Strategic product payment**	
Payment (% of aggregate 1999 indirect sales at net invoice value)	*1999 indirect sales performance at list price vs target (previous year’s indirect sales at list price)*	*Payment (% of aggregate 1999 indirect sales at list rice)*	*1999 indirect out of season† sales at list price vs target (previous year’s indirect out of season sales at list price)*	*Payment (% of aggregate 1999 indirect sales at list price)*	*1999 indirect sales of Strategic products at list price as % of aggregate 1999 indirect sales at list price*
0	<50	0	<75	0	<45
1	50–59.9	0.5	75–99.9	1.0	45–54.9
2	60–69.9	1.0	100–124.9	1.5	55–64.9
3	70–79.9	1.5	125–149.9	2.0	65–74.9
4	80–89.9	2.0	150+	0	75+
5	90+				

Source: As published by BEW in *The Grocer* and *CTN*.

*All payments and targets based on wholesalers’ purchases from BEW and sales to indirect customers (ie customers qualifying for an annual or seasonal bonus from BEW).

†Out of season period defined as January, February, October, November, December.

The above is a summary of BEW’s standard financial terms of trade for wrapped impulse ice cream. All existing wholesalers of these products purchased from BEW will be sent a copy of BEW’s full terms of trading. If you do not receive these or if you are a potential wholesaler of these products please write to: Wholesaler Terms: Birds Eye Wall’s Ltd. Station Avenue. Walton on Thames. Surrey, KT12 1NT.

Note: Strategic products are the same for all distributors and are indicated to them by BEW.

4.70. Table 4.13 shows 1999 wrapped singles terms to the five wholesalers which did more than £7.5 million of total business with BEW in 1998. Although these wholesalers benefit from more favourable terms than other wholesalers, BEW told us that it was no longer its practice to supply them on a 'shared margin' basis, ie on terms that enabled them to supply retailers at a discount to list price. BEW's current practice was to negotiate discounts directly with retailers and to allow its negotiated discounts and bonuses to be available irrespective of the source of supply.

TABLE 4.13 **BEW's 1998 terms for supply of wrapped singles to distributors with total turnover (at list price) of more than £7.5 million**

Distributor	*Off-invoice discount per unit*	*Performance payments (indirect accounts only)*	*Other terms*
1.	£1.10	Guaranteed maximum payment in standard terms (equal to about 8.5% of list price)	£550,000 per year* (about 7% of list price of 1998 purchases from BEW)
2.	£1.10	Standard	£185,000 per year† (about 3% of list price of 1998 purchases from BEW)
3.	£1.10	None	18% discount on net invoice value (about 16% of list price)‡
4.	£1.10	Non-standard targets. Bonus scales are similar to standard but season extension and strategic brands payments are paid as percentage of sales at net invoice value not list price.	None (but retailers receive 15% off-invoice discounts)
5.	£1.10	Non-standard payment of 2% of net invoice value 1.8% of list price if sales increase over 1997 plus further 2% for each 5% increase attained.	£0.75 per unit (7% of list price) on indirect sales only

Source: BEW.

*£450,000 is a one-off reward and £100,000 is for promotion of Wall's products.
†£80,000 is related to the cost of administering retailer bonuses; £80,000 is related to accounting for rebates to retailers and £25,000 for the specific promotional activity of 'early season cabinet fill'.
‡Half of this is related to achievement of (unspecified) targets.

4.71. BEW offers discounts to certain retailers, with which it negotiates directly: sales to those retailers are described by BEW as direct sales. Such retailers may opt to have their deliveries made by an independent wholesaler (rather than Wall's Direct) and the wholesaler is then entitled to receive the £1.10 per unit distribution deduction. Any such deliveries by wholesalers do not count towards the wholesalers' bonus payments although BEW requires the wholesaler to take title to the goods and assume the risk of bad debts.[1] In these cases, BEW will pay the discount directly to the retailer on receipt of sales or delivery information and the wholesaler will invoice the retailer in the normal way (described by BEW as method A). BEW has also introduced alternative administrative procedures involving the wholesaler claiming the discount directly from BEW and invoicing the retailer at the discounted price, but only if both BEW and the retailer agree that the terms can be disclosed to the wholesaler (method B), or BEW invoicing the retailer as agent for the wholesaler[2] on the discounted terms (method C). Method A is unpopular with retailers as there is an adverse cash flow effect compared with methods B and C. Incomplete data for March to July show that 5 per cent of all BEW sales at list price used method B and 7 per cent method C (none used method A). This compares to a total of about 46 per cent (based on 1998 data) of all sales that were to retailers on negotiated terms suggesting that the remaining 34 per cent of sales to those retailers were through Wall's Direct and Barking.

4.72. Actual delivery costs will vary between outlets but the distribution deduction is the same for all outlets (except those in the north of Scotland). Consequently, there is an apparent incentive for low

[1]BEW told us that it viewed the wholesalers' credit risk as 'last recourse'.
[2]BEW told us that it intended to charge a fee for invoicing customers on behalf of the wholesaler but had waived its fee for 1999. BEW also told us that, because of the way its invoicing systems currently worked, it credited the wholesaler at the same time as it invoiced the retailer which was to the benefit of the wholesaler's cash flow.

delivery cost outlets not to have deliveries made by Wall's Direct (where delivery costs are less than £1.10 per unit, the savings could be shared between the retailer and the wholesaler), and for high delivery cost outlets to take deliveries from Wall's Direct. In practice any such incentives may be offset by the complexity of the administrative arrangements and retailers' choice of distributor will depend on service levels as well as price.

4.73. The remuneration ultimately achieved by a wholesaler will depend both on its proportion of direct to indirect sales (since direct sales do not qualify for performance targets) and also on how its indirect sales performance compares to BEW's targets in its published terms. Table 4.14 compares BEW's published terms offered to wholesalers with the budgeted 1999 cost of BEW's radial distribution operation (Wall's Direct and Barking) including telesales costs, half of the field sales force costs and recovery of set-up costs. For illustrative purposes, we have included half of the field sales force costs as the field sales force takes orders only for Wall's Direct and Barking and not for independent wholesalers but also does other things, such as placing point-of-purchase material, that may benefit independent wholesalers as well as Wall's Direct and Barking. As noted in paragraph 5.109, the actual 1999 costs per unit of Wall's Direct have been above the 1999 budgeted level shown in Table 4.14.

TABLE 4.14 **BEW's budgeted distribution costs compared with BEW's terms to wholesalers**

	Wall's Direct	*Barking*	*Total*
Assumed volume (m units)	8.45	1.89	10.34
Costs of distribution (£ per unit)			
Ongoing costs per unit*	2.22	1.75	2.14
Field sales force (50%)†	0.30	0.84	0.40
Recovery of set-up costs‡	0.47	-	0.39
Total	2.99	2.54	2.93
Costs of Wall's Direct (% of list price)			
Total (%)§	26.6	23.0	26.0
BEW's standard terms to wholesalers (% of list price)			
Distribution deduction§			9.8
Sales growth payment			Up to 4.5
Season extension payment			Up to 2
Strategic product payment			Up to 2
Total			9.8 to18.3

Source: Commission calculations.

*Ongoing costs per unit (except sales force costs) from Table 5.29.
†50 per cent of sales force costs per unit from Table 5.29.
‡See Table 5.33.
§Average list price of £11.26 is assumed.

Nestlé, Mars and other manufacturers

4.74. Nestlé negotiates terms with its wholesalers. Nestlé's discounts on list price for national wholesalers are between 25 and 30 per cent and its discounts for regional wholesalers from 17.5 to 22.5 per cent (its two non-exclusive distributors are within this range at 19.5 and 21.5 per cent). Nestlé's own distribution costs are lower than this at about [✂] per cent of list price: Nestlé pays Brakes a fixed fee of £[✂] per year plus £[✂] per unit, representing an average cost of £[✂] per unit[1] or about [✂] per cent of list price, while Nestlé's telesales cost were about £[✂] in 1998 or about [✂] per cent of list price. [

Details omitted. See note on page iv.

]

4.75. Mars has standard terms for wholesalers (which also apply to large retailers supplied directly by Mars). These are:

[1]The cost of Nestlé's deliveries to retail outlets served by its non-exclusive distributors, rather than by Brakes, is higher.

(a) a discount of 17.44 per cent off list price for wholesalers who operate a delivery service and 15.41 per cent for those who do not (cash-and-carry operators);

(b) further discounts for existing wholesale customers of 2 to 4.55 per cent, depending on average drop size of deliveries to them in the previous year;

(c) a prompt payment discount of 2.2 per cent of the net price (after deducting the discounts in *(a)* and *(b)* above) if payment is made within 12 days and 2.5 per cent if the full amount is settled immediately; and

(d) a performance bonus of up to 3 per cent of net price for increasing 1999 sales compared with those for 1998.

Mars does, however, vary the drop size discount (see *(b)* above) for some customers in exceptional circumstances.

4.76. Other manufacturers generally negotiate terms with their wholesaler customers.

Terms offered by manufacturers to retailers

4.77. Manufacturers of branded products often maintain a relationship with retailers even when those retailers are supplied by wholesalers rather than the manufacturer directly. In the case of impulse ice cream, this relationship takes a variety of forms including:

(a) offering discounts and/or rebates, paying performance-related bonuses and/or discounts and making other incentive payments (for example, for achieving agreed stocking levels);

(b) payments to retailers for promotional and marketing support and merchandising allowances, especially in the context of outlet exclusivity and freezer stocking agreements;

(c) providing merchandising advice through a field sales force;

(d) providing promotional leaflets, signage, litter bins, umbrellas etc at the point of sale; and

(e) providing freezers.

4.78. As far as BEW's terms are concerned, retailers selling Wall's impulse ice cream may be divided into the following categories:

(a) Negotiated terms, where BEW agrees with the retailer a discount off the list price. In most cases, BEW also pays an overrider discount or rebate linked to volume achieved and BEW may also make payments to the retailer linked to promotional and marketing support, and share of total freezer space.[1] In some cases, the terms for the supply of impulse ice cream are linked to the supply of take-home ice cream and the terms for wrapped singles may be linked to the terms for scoop.

(b) Standard terms shown on the back of Wall's price list, which include year-end bonus scales. The bonus scales give a proportionately higher bonus on the whole of annual purchases of ice cream, the higher the volume of sales. There is a higher bonus scale for outlets without a BEW freezer.

[1]For example, TM Retail (comprising Martins, Forbuoys and R S McColl CTN and convenience stores) in 1999 receives [✄] per cent discount off list price, guaranteed overrider of [✄] per cent of net invoice value (equivalent to [✄] per cent of list price), targeted overrider of up to [✄] per cent of net invoice value and £[✄] merchandising fee (the targeted overrider and the merchandising fee are together worth about [✄] per cent of list price). In return BEW expects to receive a minimum of 55 per cent of space in TM's industry cabinets (rising to above 60 per cent where cabinet configurations allow), and among other things full regular access to TM's ice cream electronic point-of-sale data.

(c) Standard seasonal terms, which similarly include a bonus scale.[1]

(d) Mobile van operator terms.

(e) Other terms, which are no longer offered by BEW, but on which some retailers remain.

Table 4.15 summarizes the terms offered and shows the approximate value of sales at list price and number of outlets in each of the above categories. Total discounts and bonuses were lower in 1998 than 1997 due to lower purchases from BEW associated with the poor weather. VdBF-I told us that the majority of its Northern Ireland customers are small retailers receiving annual retrospective bonuses averaging 7.5 per cent of list price. Its larger retailer and buying group customers negotiate terms and receive average discounts of about 15 per cent of list price. VdBF-I has no bonus scales specifically for seasonal customers. VdBF-I's list prices for identical products are the same as those of BEW although its year-end bonus scales are different (in particular higher bonus rates are paid only on incremental purchases and not on total purchases as with BEW's scales).

TABLE 4.15 **BEW's terms to retailers**

	Discount off list price	*Bonus*	*Average total terms 1998* %*	*BEW's sales at list price 1998 £m*	*Number of outlets 1998*	*Number of mobiles approx*
Negotiated terms	Negotiated	Negotiated	16.2	65.0	25,500	
Standard terms:						
BEW freezer	None	0–8%	1.8	16.3	16,790	
Non-BEW freezer	None	0–10%	4.6	12.0	20,579	
Unclassified†	None	None	0.0	17.2	Unknown	
Seasonal terms	None	0–33.3%	15.6	10.9	4,981	
Mobiler terms	17.50%	Target scales‡	28.1	12.3		2,800
Other terms	None	Variety	10.7	7.8	9,281	
Total for all outlets				141.4		2,800

Source: BEW.

*Average discount plus bonus as percentage of list price. BEW's RRP is based on a notional retailer's profit margin of about 23 per cent of RRP, so a retailer selling at RRP and buying on average negotiated terms of 16 per cent would earn a profit margin of 35 per cent of RRP (23 per cent plus 77 per cent of 16 per cent).

†Outlets which were not supplied in 1998 by dedicated distributors and for which BEW has received no 1998 bonus claim.

‡Wall's franchisees who are fleet operators benefit from business plan payments of up to 10 per cent of the previous year's net invoice value. They also receive the terms to wholesalers (except that the sales growth payment is paid on net invoice value rather than sales at list price). If not selling their own ice cream from Wall's liveried vehicles, they also receive a 2 per cent non-manufacturing discount from list price. Smaller franchisees (called Independent Franchisees) who usually have just one liveried van and are not wholesalers receive a 12.5 per cent rebate on wholesale list price, but do not receive the non-manufacturing deduction or the Business Plan payment. This is paid by BEW following receipt of evidence of purchase (from the distributor). Mobilers who are not franchisees do not receive bonuses.

4.79. Figure 4.1 shows BEW's standard and seasonal bonus scales and also the 1998 terms received by the largest 180 retailers with negotiated terms (but does not reflect promotional payments by BEW to the retailer). The following points are illustrated by Figure 4.1:

(a) The bonus scales provide for increased bonuses as purchases of BEW ice cream increase, ie the more the retailer spends on BEW ice cream, the lower the effective price of BEW ice cream. As shown in Appendix 4.7, the non-linear nature of BEW's bonus scales has the effect of reducing the price that a competitor (not offering a full product range) would have to charge and consequently could encourage loyalty to BEW products. Our survey of small retailers found that 58 per cent had received or expected to receive discounts, bonuses or rebates on their purchases of Wall's impulse ice cream products in 1999. Of these, 14 per cent said that the availability of such discounts had dissuaded them from purchasing other manufacturers' impulse ice cream. As

[1]Seasonal outlets would typically be beach kiosks and outdoor leisure attractions.

shown in Appendix 4.2, only 3 per cent of small retailers selling only BEW products quoted volume-related discounts as a reason for not stocking other manufacturers' impulse ice cream and only 1 per cent mentioned volume-related discounts, rather than other reasons, first (respondents were asked to give three reasons).

(b) Discounts to retailers on negotiated terms vary widely up to a maximum of 47 per cent (apart from one retailer receiving 79 per cent (due to taking stock near its sell-by date). It should be borne in mind that Figure 4.1 does not reflect all promotional/marketing support payments by BEW to retailers. It also shows only retailers' 1998 purchases via the dedicated distributors and excludes retailers where BEW was unable to identify the bonus paid to a specific retailer for impulse ice cream only:[1] BEW's total sales to these retailers in 1998 was £37 million, compared with the total of £65 million in Table 4.15 for all retailers on negotiated terms. Some of BEW's largest retail customers purchased all or most of their BEW impulse ice cream from national wholesalers in 1998. Based on the data available, BEW's negotiated discounts and bonuses average some 33 per cent to leisure retailers, 27 per cent to catering, 23 per cent to travel, 22 per cent to grocery retailers, and 13 per cent to retailers BEW describes as 'traditional trade shops' (primarily CTNs and convenience stores). Retailers which have agreed outlet exclusivity in the travel sector receive discounts and bonuses averaging 40 per cent while those classified as traditional trade shops receive discounts and bonuses averaging 21 per cent, above the average for all retailers in those types of outlet. In the leisure sector, BEW's total discounts and bonuses are similar (33 per cent) for retailers with and without outlet exclusivity.

4.80. BEW's standard terms offer a higher bonus to retailers without a BEW freezer than to those who have a BEW freezer installed, providing the outlet's annual turnover is over £1,050. However, the majority of outlets on standard terms are likely to fall below this turnover threshold. As shown in Table 4.16, this was the case throughout 1995 to 1998. BEW's other terms are the same for retailers with and without BEW freezers. For retailers on negotiated terms, this depends on BEW's offers during negotiations, but BEW told us that in the last three years 'BEW has not offered to supply impulse ice cream on more favourable terms or conditions if customers use industry freezer cabinets'. Table 4.17 shows that BEW's revenue in 1998 from paying lower bonuses to retailers on standard terms was only about 5.4 per cent of its estimated costs of freezer provision for all its freezers.

TABLE 4.16 **Outlets with BEW freezers on standard terms**

Year	*Minimum turnover**	*Estimated number of outlets with BEW freezers below minimum turnover†*	*Total number of of outlets with BEW freezers on standard bonus terms*	*Percentage below minimum %*
1995	850	8,352	16,829	50
1996	890	9,957	16,939	59
1997	1,001	10,436	17,370	60
1998	1,051	11,056	16,790	66

Source: Commission calculations based on data supplied by BEW.

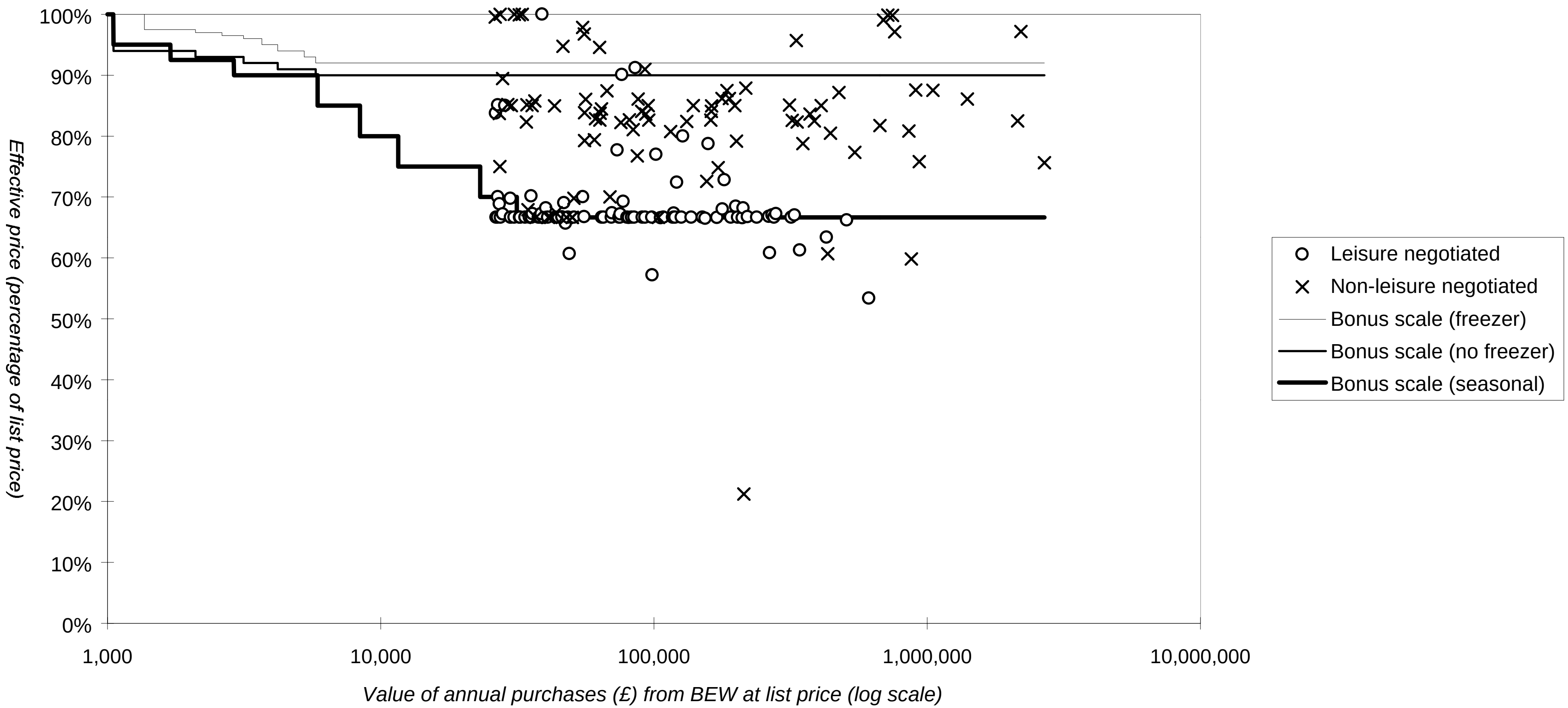
*Minimum turnover (on BEW ice cream) to earn bonus for outlets without BEW freezer. Outlets with turnover above this figure get a lower bonus if they have a BEW freezer.

†The number of outlets with a BEW freezer which have turnover between the minimum for outlets without a BEW freezer (turnover band 0) and the minimum with a BEW freezer (turnover band 1) is unavailable (only the combined total for bands 0 and 1 is available). The assumption used here is that the percentage of all outlets in turnover band 1 is the same for outlets with a BEW freezer as for those without a BEW freezer (information for which is available).

[1]BEW told us that this was primarily the case where the account was part of a larger organization or where impulse ice cream was a very small proportion of the retailer's overall ice cream purchases.

FIGURE 4.1

BEW’s total terms to retailers, 1998: actual negotiated terms and bonus scales



Source: BEW.

Note: The figure shows negotiated terms for the largest 180 retailers for which full data are available (from BEW). Value of purchases for retailers on negotiated terms reflects all purchases by the retailer (which may have many outlets). Value of purchases for the bonus scales reflects purchases by the outlet.

TABLE 4.17 **1998 revenue and costs of BEW freezer cabinets**

Purchases (list price)	*Number of outlets*	*Average turnover £*	*Lower bonus %*	*Revenue £'000*
Revenue from freezer cabinets				
Revenue from customers on standard bonus scale above minimum turnover				
£1,051–£1,365	1,833	1,195	6	131
£1,366–£2,100	2,381	1,665	4	139
£2,101–£2,625	708	2,330	4	66
£2,626–£3,150	377	2,864	4	38
£3,151–£3,675	184	3,382	4	25
£3,676–£4,200	94	3,901	3	11
£4,201–£5,250	82	4,652	3	11
£5,251–£5,775	25	5,476	2	3
£5,776+	50	7,944	2	8
Total all categories	5,734			432
Freezer revenue from customers on standard terms*				432
Freezer revenue from other customers				-
Total freezer revenue				432
Costs (£'000) of freezer cabinets				
Maintenance				3,835
Monitoring and enforcement of exclusivity				Unknown
Depreciation				2,934
Loss on disposal				185
Cost of capital employed†				975
Total‡				7,929
Total revenue as % of total costs				5.4

Source: BEW.

*In 1998 BEW had 22,122 freezers in outlets on standard terms for which it had data, including 11,056 outlets with list price purchases below £1,051. As each outlet with turnover above £1,051 had at least one freezer, there were between 5,734 and 11,056 freezers in these outlets and the average revenue per freezer was £39 to £75.

†Average net book value of £9.75 million at 10 per cent pre-tax cost of capital.

‡The cost per freezer was £91 on the basis of 86,891 freezers in use.

4.81. Nestlé has standard terms and standard bonus scales similar to those of BEW (the bonus scale is, however, more generous for retailers both with and without a freezer supplied by the manufacturer). Nestlé also has a number of other bonus scales (including for outdoor leisure outlets, indoor leisure outlets, council authorities and educational establishments) offering larger bonuses. Table 4.18 illustrates Nestlé's standard bonus scales and its scales for leisure outlets. The bonus scales are available to Nestlé's direct customers, to customers of its non-exclusive distributors within their territories, to some other customers supplied by independent wholesalers and have this year been offered to customers of the ex-dedicated distributors as well. They are not necessarily available to customers of independent wholesalers (other than the ex-dedicated distributors).

TABLE 4.18 **Nestlé's bonus scales**

per cent

Outlet's purchases of Nestlé ice cream (at list price)	*Standard scales*		*Leisure scales*	
	Nestlé freezer	*Customer freezer*	*Outdoor*	*Indoor*
Up to £749	0	0	0	0
£750–£1000	1.5	4	0	0
£1,001–£1,500	2.5	6	7.5	7.5
£1,501–£1,700	2.5	6	7.5	10
£1,701–£2,000	4	8	7.5	10
£2,001–£2,500	4	8	7.5	15
£2,501–£3,000	6	10	10	15
£3,001–£4,000	7	11	10	17.5
£4,001–£5,000	9	13	15	20
£5,001–£6,000	11	14	15	25
£6,001–£6,500	12	15	17.5	25
£6,501–£8,000	12	15	17.5	30
£8,001–£10,000	12	15	20	33.3
£10,001–£13,000	12	15	25	33.3
£13,001–£18,000	12	15	30	33.3
£18,001–and over	12	15	33.3	33.3

Source: Nestlé.

4.82. Mars offers 'cash back' end-year bonuses primarily to independent retailers. Mars's bonus scales are shown in Table 4.19. The average bonus paid in 1998 was 1.5 per cent of purchases at list price. Larger bonuses are available to leisure outlets spending over £3,000 and Mars sometimes guarantees the maximum bonus of 24 per cent in order to secure good new accounts. Mars also pays an 'Account Marketing Investment' bonus of between 0.5 and 4.0 per cent principally to multiple retailers supplied through wholesalers: this is paid in recognition of retailers achieving, for example, agreed distribution levels, display of agreed products and adherence to agreed planograms for Mars freezers.

TABLE 4.19 **Mars's bonus scales**

per cent

Outlet's purchases of Mars ice cream (at wholesale list price)	*Cash back*	
	Leisure	*Other*
Up to £749	0	0
£750–£999	2.5	2.5
£1,000–£1,249	3	3
£1,250–£1,499	4	4
£1,500–£1,749	5	5
£1,750–£1,999	6	6
£2,000–£2,999	7	7
£3,000–£3,999	12	9
£4,000–£6,999	15	9
£7,000–£7,999	18	9
£8,000–£8,999	21	9
£9,000 and over	24	9

Source: Mars.

Terms offered by wholesalers to retailers

4.83. Wholesalers negotiate with retailers on such matters as credit, frequency of delivery and prices. The terms offered by wholesalers will depend on such factors as order size, what other products the wholesaler may be delivering and on the terms the wholesaler obtains from the manufacturer (including incentives such as bonus payments). The outcome of negotiations between wholesalers and retailers may be supply at list price, supply at below list price (more likely for large order sizes) or supply at list price plus a delivery charge (more likely for small order sizes).

4.84. Wholesalers told us that they were unable to offer discounts off list price on BEW's impulse ice cream as BEW's margin to them was too narrow (as noted above, BEW also told us that it no longer supplied wholesalers on a 'shared margin' basis). We were also told that the need for wholesalers to be competitive with Wall's Direct, which offered next-day delivery on the smallest possible order (one unit) for list price, made it harder for them to levy a delivery charge on Wall's orders.

Retail prices

4.85. BEW,[1] Mars and Nestlé and other manufacturers, including Treats, publish RRPs. As shown in Table 4.20, retailers tend to price at or above RRP: large retailers and leisure operators are more likely to price above RRP. Other impulse products are also likely to be priced above RRP at leisure outlets.

[1] VdBF-I's RRPs are the same as BEW's, where the products are the same. VdBF-I's price list also covers some products that are not sold by BEW.

TABLE 4.20 **Retailers' wrapped impulse pricing against RRP**

per cent

	CTNs	*Convenience grocers and co-ops*	*Forecourt*	*Leisure*	*Large supermarkets*	*Other*	*Total*
Price above RRP							
Large retailers:* always	42	1	23	64	0	0	18
Large retailers:* usually	22	0	66	20	0	0	16
Large retailers:* total	63	1	89	84	0	0	34
Leisure operators:† total	N/A	N/A	N/A	99	N/A	N/A	99
Small retailers:‡ total	5	4	12	34	N/A	N/A	9
Price at RRP							
Large retailers:* always	20	70	1	0	62	92	47
Large retailers:* usually	7	29	2	16	38	1	13
Large retailers:* total	28	99	3	16	100	93	60
Leisure operators:† total	N/A	N/A	N/A	1	N/A	N/A	1
Small retailers:‡ total	94	93	88	62	N/A	N/A	89
Price below RRP							
Large retailers:* always	0	0	0	0	0	0	0
Large retailers:* usually	0	0	0	0	0	0	0
Large retailers:* total	0	0	0	0	0	0	0
Leisure operators:† total	N/A	N/A	N/A	0	N/A	N/A	0
Small retailers:‡ total	0	1	0	2	N/A	N/A	1
No RRP or no answer							
Large retailers: total	9	1	8	0	0	7	5
Small retailers	1	2	0	2	N/A	N/A	1
							number
Number of respondents							
Large retailers	11	10	8	15	4	5	53
Large retailers: number of outlets	4,188	3,646	2,233	749	1,326	3,280	15,422
Leisure operators	-	-	-	21	-	-	21
Small retailers	300	300	104	100	N/A	N/A	804

Source: Commission questionnaires to large retailers and leisure operators, small retailer survey.

*Percentage of respondent's outlets selling impulse ice cream. Turnover information incomplete. It should be borne in mind that leisure outlets tend to have higher impulse ice cream sales than other outlets.

†Percentage of turnover of respondents who set ice cream prices and provided turnover information: 87 per cent by turnover said that they always priced above RRP, 12 per cent usually priced above RRP. Of the 21 respondents, 10 said that they always priced above RRP, 6 usually priced above RRP, 4 usually priced at RRP and 1 that he/she always priced at RRP. The turnover of those pricing at RRP was low relative to the others.

‡Percentage of respondents. Most respondents had only one outlet.

4.86. The Commission's 1998 report included tables analysing the trend in RRPs of BEW, Mars and Nestlé.[1] The Commission noted that there had been some significant rises in the real price of BEW products, although these had generally been smaller in the period 1993 to 1998 than in the period to 1993. During the present inquiry, BEW told us that, on average, the prices of its products had risen by 15.5 per cent[2] between 1994 and 1998: this represents an increase of 3.4 per cent compared with the RPI (excluding mortgage interest rates) and 7.1 per cent compared with the producer price output index for manufacturing industry. BEW's prices did not change in 1999: this represents a decline in real terms of about 2 per cent compared with the RPI (excluding mortgage interest rates) and 1 per cent compared with the producer price output index for manufacturing industry. In BEW's board minutes for 25 January 1999, it was stated that price increases were 'not an option this year—for the first time in a long while; if anything the pressure due to external influences was for price deflation (given continually low raw material and commodity prices)'. Nestlé and Mars also did not change the prices of most products in 1999.[3]

[1]Table 5.16 showed prices of selected BEW wrapped singles, 1982 to 1998, and Table 5.17 showed comparable information for selected Mars and Nestlé products, 1993 to 1998.

[2]This represents the average (weighted) increase in list price: the average increase in RRP is the same since the notional retailer's margin has remained constant at 23 per cent.

[3]The main exceptions are that the RRP of Mars's Starburst increased from 70p to 80p and that of Nestlé's Zoom increased from 45p to 50p.

Barriers to entry and expansion

4.87. It is possible to distinguish between two main types of entry barrier:

(a) Absolute barriers: these occur, for example, when entrants are unable to obtain a licence to carry out some activity: a current example is postal services costing less than £1 (to be reduced to £0.50) where the Royal Mail still enjoys a legal monopoly. Intellectual property rights such as patents can also be associated with absolute barriers.

An incumbent firm with a large market share might be constrained by the threat of entry in the absence also of the second type of barrier, which is:

(b) Barriers associated with sunk costs (that element of costs that is irreversible and irrecoverable). If entry requires expenditure on sunk costs, a potential entrant must plan on the basis that exit is costly and must take into account the response to entry of existing suppliers. By contrast, in the absence of sunk costs, a highly concentrated market might be contestable since even an incumbent firm with a large market share could be vulnerable to a 'hit and run' entry.

4.88. Where sunk costs are present, it may be profitable for a dominant firm to pursue policies that raise entrants' costs and thus make entry even more difficult.

4.89. In the presence of entry barriers, entrants may nevertheless be able to enter profitably at a smaller scale, for example into niche sectors of the markets, but not to compete profitably across the full range of products with a dominant incumbent firm. Thus, barriers to expansion as well as entry barriers may be of importance.

4.90. Barriers to entry and expansion enable incumbent firms to charge higher prices than would otherwise be the case. In some circumstances, it may be difficult to distinguish the effect of barriers to entry and expansion from the effect of any efficiency advantages of incumbent firms: if incumbent firms do have efficiency advantages compared with potential entrants, this would discourage entry but would not raise prices compared with the level that would otherwise prevail.

4.91. We received no evidence of significant absolute barriers to entry into impulse ice cream. Clearly intellectual property rights such as copyright and patents affect this market, as others, but the benefits of intellectual property rights are available to both entrants and incumbent firms.

4.92. The principal areas in which sunk costs are significant in the ice cream market include:

(a) plant and machinery;

(b) research and development (R&D); and

(c) advertising and promotional expenditure.

Each of these categories of expenditure has long-lived effects and cannot be fully recovered on second-hand markets. They are discussed in turn below.

4.93. The cost of the plant and machinery required for the production of soft mix and bulk ice cream is low. The production of high-quality wrapped ice cream requires more expensive machinery: it was suggested to us that the cost of a new production line was about £6 million. The total cost of setting up a facility to produce wrapped products would be considerably more, and this would deter producers of bulk ice cream from expanding into wrapped products. However, in the context of the UK market, an entrant could import wrapped ice cream: there are a small number of European manufacturers (other than Unilever subsidiaries, Nestlé and Mars) capable of producing high-quality wrapped ice cream, including Menorquina (Spain), Schöller (Germany), Mio (Belgium) and Henrik Ohlsen (Norway). Importing does involve some additional transport and transaction costs and time in getting products to market, putting an entrant at some disadvantage compared with BEW and Nestlé (which manufacture most of their UK sales within the UK) but not Mars (which does not manufacture within the UK). Nevertheless, given the importing option, it seems doubtful that expenditure on plant and machinery is a decisive barrier to entry into the UK market.

4.94. BEW told us that R&D was carried out centrally by Unilever and expenditure was about 2 per cent of ice cream turnover, including both research laboratories and innovation centres carrying out closer-to-market development activity. An entrant would not necessarily need to spend similar amounts, in particular if importing the most R&D-intensive products from independent European manufacturers.

Moreover, R&D is both a sunk cost and subject to large economies of scale but its effect as an entry barrier may be limited by the difficulty of excluding competitors from some of the benefits: the full benefits of R&D may not be protected by intellectual property rights, as competitors appear to be able to copy some or even most of the features of new products and processes.

4.95. As noted above, wrapped singles are prominently branded by the manufacturers. Wrapped multipack and other take-home ice cream is either branded by the manufacturers or by the retailer (known as retailer own brand (ROB) products). Other impulse ice cream (scoop and soft-serve) tends to be less prominently branded or sold as unbranded ice cream (as, for example, by McDonald’s). A manufacturer of a branded product needs to create consumer demand for the products in order to persuade retailers to stock it. This requires expenditure on advertising and promotional activities. As advertising and promotional expenditure is a sunk cost and also subject to economies of scale (its cost does not rise pro rata with the value of sales), it may represent a significant barrier to entry into the sale of branded wrapped ice cream. By contrast entry into the sale of ROB wrapped ice cream is relatively easy since the entrant only has to offer more favourable terms to retailers than do the incumbents and does not have to first generate awareness of the product through advertising and promotional activities. This feature of the wrapped ice cream market is similar to other ‘impulse’ product categories, including carbonated drinks, confectionery and snacks (ie crisps, nuts etc). This point was emphasized to us by BEW.

4.96. Table 4.21 shows that BEW’s level of advertising and promotional expenditure has in recent years been between 10 and 14 per cent of its sales value at MSP (the percentage of sales value at RSP would be lower). The percentage for Mars is similar. It should be noted that the table covers all wrapped products (single and multipacks) as the advertising covers both. There is some difficulty in distinguishing promotional expenditure which has similar effects to advertising in building consumer awareness of the product from promotions that are effectively price reductions. For example, handing out free product samples for consumers to try clearly counts as promotional expenditure, while repeated ‘buy one get one free’ offers are more akin to price reductions and are treated as such in Table 4.21.

TABLE 4.21 **Comparison of advertising and promotional expenditure for wrapped ice cream (including single and multipacks)**

£’000

	1989	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*Total*
Advertising expenditure											
BEW	[*Figures omitted. See note on page iv.*]										
Mars											
*Promotional expenditure**											
BEW	[*Figures omitted. See note on page iv.*]										
Mars											
Customer advertising/trade promotions†											
BEW	[*Figures omitted. See note on page iv.*]										
Mars											
Total advertising and promotional expenditure											
BEW	6.0	8.3	8.4	9.2	11.1	12.2	14.5	14.9	14.6	17.0	107.1
Mars	[*Figures omitted. See note on page iv.*]										

per cent

	1989	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*
Total advertising and promotional expenditure as percentage of sales value (single and multipacks at MSP)										
BEW	N/A	N/A	N/A	N/A	N/A	N/A	N/A	12.3	10.8	13.9
Mars	[*Figures omitted. See note on page iv.*]									

Source: Commission estimates based on data supplied by BEW and Mars.

*Promotional expenditure includes the cost of setting up and running consumer promotions and the cost of pack design but excludes the effect of lower prices and larger packs (1989 to 1994 Mars figures estimated by the Commission). The cost of point-of-sale material (for both standard and promotional display) is included. Special offers to wholesalers/retailers (eg pre-season stock fill) are excluded. BEW costs include design of standard as well as promotional packs and public relations but exclude the costs of coupons and the charge levied by Unilever’s innovation centre.

†Payments/reimbursements to the trade for the cost incurred for promotional materials.

Note: This table is intended to give an indication of expenditure by the two companies. The Commission has not been able to obtain exact comparability of coverage between the two companies.

4.97. The level of expenditure on advertising and promotion represents a significant barrier to entering with similar products to incumbent producers. A possible strategy available to an entrant is to enter with a new product that is significantly different from existing products. A new product will have to be promoted whether it is introduced by an entrant or by an incumbent manufacturer. In this context, the extent of the entry barrier may depend on whether the main promotional activity is at the level of the range (for example, Wall's, Nestlé) or the level of the product (for example, Magnum, Solero). Other things being equal, the entry barrier will be greater the more the range rather than the individual product is promoted. In general, it would seem that the name of the range as well as that of the product is promoted. For example, the Wall's name and the Unilever ice cream logo are prominently displayed outside many of the outlets at which Wall's ice cream is sold. On the other hand, BEW's advertising is specific to individual products. Entry may be assisted by the use of an established brand name, such as Mars or Cadbury's, used in another impulse market.

4.98. In addition to the entry barrier posed by sunk costs, some practices of incumbent firms may also deter entry:

(a) *Exclusive distribution*. In this context meaning that a manufacturer's impulse ice cream is distributed by distributors which do not distribute other manufacturers' products using the same facilities. This makes it more expensive for entrants with a limited range of products to distribute their products, given the economies associated with drop size and density (see paragraph 4.11). For example, if an entrant with a small range of new products aims to take 20 per cent of sales at an outlet supplied by an incumbent's exclusive distributor and delivery costs are invariant to drop size, the entrant's delivery costs per unit of sales will be four times as great as that of the incumbent firm with the remaining 80 per cent of sales. Exclusive distribution may also deter existing manufacturers with a limited range from expanding into new outlets.[1]

(b) *Exclusive freezers*. Where the retailer has one or more exclusive freezers and no non-exclusive freezers, an entrant would have to either provide its own exclusive freezer[2] or alternatively persuade the retailer to replace at least one of the exclusive freezers with a non-exclusive freezer. Each of these options is likely to be more costly to the entrant with a small range of products than would be the case in the absence of exclusive freezers. First, as shown in Appendix 4.8, the acquisition and running cost per unit of space is higher for a small freezer (stocking a small range) than a large freezer (stocking a full range). Second, the retailer may be disinclined to purchase a non-exclusive freezer, requiring the entrant to offer better terms in compensation, or alternatively the entrant may have to provide an industry freezer and thus bear a disproportionate share of the refrigeration costs.[3] The entrant's costs would not, however, be higher if displacing the incumbent manufacturer's range altogether: the entrant's costs of freezer provision would then be similar to those of the incumbent manufacturer.

(c) *Retrospective volume-related bonuses*. As discussed in Appendix 4.7, the effect of the loss of these bonuses may be that an entrant with a small range of products has to sell at lower effective prices than the incumbent firm would have done.

(d) *Outlet exclusivity*. An entrant with a small range of products is unable to supply outlets which seek exclusivity, except possibly in conjunction with other suppliers of small ranges. However, the practical effect of this on entry would depend on the proportion of the market that was tied to long-term exclusive outlet agreements. If a significant proportion of important outlets (for instance, those with a high level of visibility) are tied at one time by exclusivity agreements, this may present a significant entry barrier, even for a full-range supplier.

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[1]BEW disagreed with the arguments following the first sentence for the following reasons: first, distributors carrying a range of brands are available to new entrants and their drop size (over all brands) will be close or equal to the optimum; second, new entrants may already have access to the relevant outlets for other products (for example Mars which already had access to impulse outlets for confectionery when it entered impulse ice cream) and may be able to distribute ice cream 'on the back' of this. We note, however: BEW's first reason will not apply when there is an incumbent with well over half the sales from a significant number of outlets; in relation to BEW's second point, impulse ice cream has specialized distribution requirements and is rarely distributed with ambient impulse products such as confectionery.

[2]Either as a replacement or an addition.

[3]This assumes that the exclusive freezers provided by incumbent manufacturers are free on loan or at a subsidized rental and thus that the retailer cannot offset the cost of the industry freezer with rental savings. BEW, Nestlé and Mars all provide freezers on a free-on-loan basis. As discussed in paragraph 4.80, BEW offers lower end-year bonuses to customers on standard terms provided with a BEW freezer but the aggregate revenue from lower bonuses is substantially less than the costs of providing the freezers. Nestlé also offers lower end-year bonuses to customers on standard terms with a Nestlé freezer.

4.99. Each of these practices may have the effect of deterring an entrant seeking to provide a small range of impulse ice cream products. The practices would not have the effect of deterring entry by a full-range entrant seeking to displace incumbent manufacturers from certain outlets. However, as noted above, advertising and promotional expenditure represents a barrier to entry by new full-range suppliers.

Entry history

4.100. Wall's introduced the factory production of ice cream to the UK in 1922, with a plant imported from the USA (prior to that date production of ice cream in the UK had not taken place on a factory scale). The evidence available indicates that Wall's (subsequently acquired by Unilever) has had the largest share of the UK ice cream market since that time. Many other firms followed Wall's into the factory production of ice cream, but until the 1960s Wall's was the only national brand, other manufacturers having regional rather than national coverage. Following the merger of three companies in the early 1960s, a second national brand (Lyons Maid) was established. At the time of the Commission's 1979 report, the Commission found that Wall's and Lyons Maid faced strong competition from other 'secondary' manufacturers in the grocery sector (supermarkets and freezer centres), but not in the traditional sector (small shops,[1] and seasonal, mobile and entertainment outlets). The Commission noted in 1979 that 'unless frozen food wholesalers took over much more responsibility for distribution, it would be impractical for a company lacking the volume of sales of Wall's or Glacier [the owner of the Lyons Maid brand] to challenge either as a national supplier to the traditional sector'.

4.101. Shortly after the Commission reported, in 1980, Wall's market share in impulse ice cream was 52 per cent whilst that of Lyons Maid was 39 per cent.[2] During the 1980s, Wall's placed increasing emphasis on individual product brands (including Cornetto, Feast, Calippo) as well as the Wall's house brand. Lyons Maid's market share declined during the 1980s probably because it invested much less in product and brand development and advertising than did Wall's, and by 1990 its share of wrapped impulse had fallen to 23 per cent and that of BEW had increased to 68 per cent. A further sharp decline in the share of Lyons Maid to about 10 per cent occurred in 1992 following its sale by Allied-Lyons to a company which shortly afterwards went into receivership. The business was acquired from the receiver by Nestlé, which has subsequently phased out the Lyons Maid brand. In Northern Ireland, Dale Farm had had the largest share of the market at the time of the Commission's 1979 report; since then it has faced increasing competition from VdBF-I and, as noted above, the share of the two companies is now similar.

4.102. In 1991, the Treats business, which had been owned by Unilever, was bought by its management. Prior to the buyout, Treats had sold impulse ice cream (primarily ice lollies) to BEW and to mobilers and other wholesalers supplying mobile vans and kiosks. After the buyout, Treats sought to expand into supply via wholesalers to CTNs and other shops. Treats is also a supplier of multipacks and in 1998 merged with Richmond, a supplier of take-home ice cream.

4.103. Mars entered the UK ice cream market in 1989, initially concentrating on sales of multipacks to supermarkets. In 1990 Mars had agreed with Lyons Maid that a limited range of Mars products would be distributed into Lyons Maid freezers, but the agreement ended in 1996. The data in Table 4.3 suggest that Mars's market share in wrapped singles rose to a peak of about 15 per cent in 1995. It should be noted that Mars's entry into the ice cream market was Europe-wide following the opening of its factory near Strasbourg in France. Mars told us that it had experienced problems in all European countries in having its impulse ice cream distributed, especially following the acquisition of three of its distributors by its main competitors (Lyons Maid and Italgel by Nestlé and the French company, Miko, by Unilever). More recently, Mars has developed its business in supplying multipacks to UK and French supermarkets, where distribution was easier to obtain. Despite its success with multipacks, Mars's UK ice cream business only breaks even and Mars still has excess capacity in its European factory.

4.104. Other significant entrants into the UK ice cream market include two other US companies, Häagen-Dazs and Ben & Jerry's, selling premium-quality ice cream. Most of these companies' sales are of take-home ice cream, but they also have a presence in the impulse market: both sell scoop and wrapped ice cream (in small tubs) and Häagen-Dazs also sells stick products. Another US-based entrant selling scoop ice cream is Baskin Robbins. Both Baskin Robbins and Häagen-Dazs have their own ice cream parlours. This year Frederick's, a manufacturer of ROB multipacks, has successfully launched (under licence) a range of Cadbury's branded wrapped ice cream products into the multipack market and has also introduced this range, on a limited basis for market evaluation, into the impulse market. Distribution into

[1] At that time small shops still sold a considerable amount of dessert ice cream as well as impulse ice cream.
[2] Source: BEW, quoted in the Commission's 1994 report.

the latter has been through independent wholesalers, including the ex-dedicated distributors, and Frederick's told us that it had achieved significant consumer purchase levels in non-exclusive freezers. Under current conditions Frederick's told us that it expected to achieve only limited growth in its impulse sales; but it could achieve much greater growth if competitive conditions were improved as a result of the Commission's inquiry, for example by ending freezer exclusivity for all manufacturers and meeting clear consumer demand for a wider range of quality branded products. At the retail level, there has been an expansion of sales of soft ice cream by fast-food outlets such as McDonald's and of scoop ice cream by chocolate confectionery outlets such as Thorntons PLC.

Market shares and penetration of manufacturers' brands in wrapped ice cream

4.105. During the course of the inquiry we considered a variety of evidence concerning the impact of barriers to entry and expansion on the market for wrapped singles. This included:

(a) comparison of market shares in single packs with those in multipacks;

(b) retail penetration and market shares of manufacturers' brands in different retail channels;

(c) rate of sale and retail penetration of different manufacturers' products; and

(d) effect on total sales of replacing one or more exclusive freezers with an industry freezer.

Each of these is considered below.

Comparison of market shares in single packs with those in multipacks

4.106. Table 4.22 compares market shares in multipacks with shares in single packs of wrapped ice cream. Wall's share in multipacks is very much lower, reflecting primarily the share in multipacks of retailers' own-brand products which have tended to be manufactured by smaller firms that lacked the necessary brands to expand in the single pack market.[1] A second feature, at least in 1997 and 1998, is that Mars's share of multipacks is much greater than its share of singles packs. This appears to reflect in particular Mars's strong promotion of its multipack brands, such as 'buy one get one free' promotions: about 80 per cent of Mars's multipack sales were on promotion while the percentage was lower for BEW's products.

4.107. BEW provided us with a copy of a report it had commissioned by Professor Barwise[2] on 'An evaluation of impulse vs multipack ice cream markets'. Professor Barwise said that manufacturers' shares in the multipack market are extremely promotion sensitive and are capable of increasing or decreasing rapidly sometimes by a factor of 4 in response to price changes and levels of promotional activity. Promotions of the 'buy one get one free' type had a particularly strong effect on the multiple grocery channel for multipacks but were not possible in the impulse market and consequently, in his opinion, Mars's extremely high levels of promotional activity had distorted multipack market shares and there was no fruitful comparison to be drawn with manufacturers' shares in the impulse ice cream market. Professor Barwise also argued that differences in market share between the multipack and singles markets cannot be attributed to methods of distribution or cabinet exclusivity.

4.108. As shown in Table 4.22, Mars's 1998 net proceeds of sales for its multipacks was only about half of the sales value at list price, reflecting the high level of price reduction through 'buy one get one free' type promotions. However, BEW's 1998 net proceeds of sales from its multipacks appear to be only 52 per cent of the list price of its single packs, after allowing for the lower list price of BEW's

[1]Two manufacturers of own-brand wrapped ice cream do sell some single packs: Treats, which concentrates on sales through mobile outlets and kiosks where branding is less important (as shown in Table 4.23, its share in CTNs, independent grocers and petrol stations is very low), and Frederick's, the 1999 entry of which is discussed in paragraph 4.104.
[2]Professor of Management and Marketing at the London Business School.

TABLE 4.22 **Wrapped singles versus multipacks**

per cent

	1994		*1995*		*1996*		*1997*		*1998*	
	Singles	*Multipacks*	*Singles*	*Multipacks*	*Singles*	*Multipacks*	*Singles*	*Multipacks*	*Singles*	*Multipacks*
Sales at RSP for Great Britain (source: BEW)										
Unilever (BEW)	62	26	63	30	65	30	70	29	70	24
Nestlé	11	8	11	9	11	9	10	9	10	9
Mars	13	8	15	9	11	9	9	13	10	23
Other branded	14	14	11	13	13	10	12	8	10	5
Retailers' own brands		44		40		40		41		38
Total	100	100	100	100	100	100	100	100	100	100
Sales at MSP for UK (source: Commission)										
Unilever (BEW and VdBF-I)									65	26
Nestlé									11	8
Mars									10	22
Other									14	45
Total									100	100

	1996	*1997*	*1998*
Net selling price of multipacks as % of multipack list price			
BEW	60.0	57.8	57.9
Nestlé	67.6	73. 8	67.6
Mars	75.3	66.1	50.2

Source: BEW, Commission estimates based on data supplied by BEW, Mars and Nestlé.

Note: Commission analysis suggests that BEW's multipack list prices (which are unpublished) are lower than its single pack list prices. We estimate that BEW's multipack prices are on average 10.8 per cent lower than comparable single pack prices. Mars's list prices are the same for multipacks as for single packs (where multipack bars are smaller, multipack list prices are higher on a size-adjusted basis).

multipacks.[1] It is not therefore clear that Mars's multipack prices are on average significantly lower, compared with single packs, than BEW's when allowance is made for both promotional activity and list prices. Moreover, as shown in Chapter 5, Mars's multipack (take-home) sales are slightly more profitable than its single pack sales while BEW's multipack sales are less profitable than its single pack sales.[2] The different experience of multipacks compared with single packs appears to reflect the greater difficulty and costs of entering and expanding in the single pack market. As noted by Professor Barwise, however, it does not necessarily reflect specific factors such as particular methods of distribution or freezer exclusivity.

Retail penetration and market shares of manufacturers' brands in different retail channels.

4.109. Table 4.23 compares retail penetration and market share in different types of outlet. Retail penetration is measured by the ratio of turnover on wrapped singles of outlets at which a product was available to the total turnover on wrapped singles of all outlets: we have described this as weighted penetration.[3] BEW's weighted penetration in August 1998 was 94 per cent in CTNs, independent grocers and petrol stations, compared with 66 per cent for Mars and 55 per cent for Nestlé. Figures for the full year 1998 (provided by BEW) show BEW 93 per cent, Mars 62 per cent and Nestlé 51 per cent, probably reflecting a tendency for secondary Mars and Nestlé freezers to be stored outside the summer season.[4] These figures relate to the weighted percentage of outlets where one or more product of the manufacturer is available. The higher market share of BEW's products reflects BEW's higher penetration and also its wider range and the greater popularity of its products (see paragraph 4.114*(a)*).

4.110. Table 4.23 also shows that Mars and Nestlé's market share and weighted retail distribution are higher in multiple CTNs than independent CTNs and (to a lesser extent) independent grocers. This may reflect the lesser significance of factors such as exclusive distribution, exclusive freezers and retro-spective bonuses for multiple CTNs compared with independent CTNs. These factors are likely to be of lesser significance to multiple CTNs which are able to negotiate with ice cream manufacturers and wholesalers regarding prices and other terms (including freezer provision). Additionally, multiple CTNs are likely to have larger shop sizes and better on-site back-up refrigeration, making them more able to use national wholesalers, carrying products of many manufacturers, as opposed to specialist ice cream distributors such as the ex-dedicated distributors which in 1998 were exclusive to BEW. This latter point also applies to independent grocers, which also sell frozen food. It should be noted that multiple CTNs negotiate a variety of arrangements for the stocking and sale of impulse ice cream: a number have agreements to purchase exclusively from BEW; a small number of others have agreement whereby a given percentage of space is allocated to one or more manufacturers (this may or may not be linked to freezer provision).

4.111. Table 4.23 covers only some types of outlet. Table 4.24 provides some data on other types of outlet (leisure and multiple grocers) from responses to our questionnaire by large retailers and our survey of small retailers. Unilever's (BEW's and VdBF-I's together) penetration of leisure outlets is lower than its penetration of shops but is nevertheless greater than that of other manufacturers.

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[1]Table 4.22 shows that BEW's net selling price of its multipacks is 57.9 per cent of multipack list price and its multipack list price is 89.2 per cent of its single pack list price: consequently, the net selling price of its multipacks is 52 per cent of the list price of its single packs.

[2]We did not ask BEW to provide separate profit data for multipacks but its 1999 margin statement showed gross profits of [✄] per cent for multipacks and [✄] per cent for single packs.

[3]It is usually described as weighted distribution. We have described it as weighted penetration to avoid confusion with physical distribution.

[4]Additionally this effect is increased where the full year figures are based on an unweighted average of the monthly figures, as the relatively unimportant (for ice cream sales) winter months receive equal weight to the summer months.

TABLE 4.23 **Penetration and market share of some manufacturers' brands by type of retail outlet (Great Britain)**

per cent

	Multiple CTNs	*Independent CTNs*	*Independent grocers*	*Forecourts**	*All these outlets*
Weighted penetration, August 1998†					
BEW	91	98	92	93	94
Nestlé	78	46	60	51	55
Mars	77	53	73	70	66
Treats	37	12	16	2	13
Market share, August 1998					
BEW	63	84	73	69	74
Nestlé	14	7	13	12	11
Mars	21	8	10	17	12
Treats	1	1	1	0	1
Weighted penetration, May 1999‡					
BEW	96	99	95	95	96
Nestlé	76	39	57	55	53
Mars	85	60	67	69	67
Treats	49	15	15	2	15
Market share, May 1999					
BEW	63	79	71	64	71
Nestlé	11	8	11	15	11
Mars	22	12	13	18	15
Treats	2	1	2	0	1
Weighted penetration, May 1998§					
BEW	92	96	91	95	94
Nestlé	74	37	55	45	49
Mars	74	49	57	75	60
Treats	31	20	15	2	15
Market share, May 1998					
BEW	64	82	71	67	73
Nestlé	12	7	13	7	10
Mars	21	9	12	22	14
Treats	1	1	2	0	1

Source: Nielsen data (provided by BEW).

*Independent and multiple petrol stations.
†Four weeks ended 8 August 1998.
‡Four weeks ended 16 May 1999.
§Four weeks ended 15 May 1998.

TABLE 4.24 **Penetration of manufacturers' impulse ice cream brands in other sectors**

per cent

	Larger leisure weighted	*Independent leisure unweighted*	*Multiple grocers* unweighted*	*Multiple CTNs unweighted†*
Unilever	65.9	60.0	92.7	94.7
Nestlé	37.6	21.0	7.3	60.7
Mars	33.8	18.0	47.4	68.9
Treats	0.7	12.0	1.7	19.0
Other	61.3	30.0	9.0	2.7

Source: The Commission.

*Includes large supermarket chains, co-ops and smaller chains.
†Shown for comparison with results in Table 4.23.
Note: Results of questionnaires are affected by non-response since respondents may not be representative. There was insufficient turnover information to calculate weighted distribution for multiple grocers and CTNs.

4.112. Table 4.25 provides further information on retail penetration of ice cream manufacturers from our small retailer surveys (the data show a simple average of respondents stocking each of the manufacturers' products—unweighted penetration—which is likely to be lower than weighted penetration as the largest selling outlets are most likely to sell the products of more manufacturers). The percentage of CTNs and grocers stocking at least one product of Nestlé or Mars increased by ten percentage points between 1998 and 1999 (Table 4.23, based on Nielsen data, shows a similar increase for Mars but not Nestlé). The percentage stocking only BEW products (which increased between 1993 and 1998) also fell quite sharply from 35 per cent in 1998 to 28 per cent in 1999. One possible explanation for these changes is the change made to BEW's distribution system in March 1999: about 26 per cent of CTNs and grocer respondents were using the ex-dedicated distributors as a suppliers of impulse ice cream. Towards the end of the inquiry Mars told us that, while its own data from early in the 1998/99 season supported our research showing an increase in the proportion of retailers stocking at least one Mars product, its high season (mid-July) data showed a position no different to that in 1998.

TABLE 4.25 **Independent retailers: manufacturers' products stocked**

per cent

Coverage	*1993 CTNs Convenience Petrol stations*	*1998 CTNs Convenience*	*1999 CTNs Convenience*	*1999 Petrol stations*	*1999 Leisure*
Unilever	80	87	89	88	60
Nestlé	26	33	43	29	21
Mars	47	40	50	34	18
Häagen-Dazs	N/A	2	5	7	1
Other	N/A	6	11	9	30
Unilever only	31	35	28	39	36
Nestlé only	6	6	5	3	11
Mars only	1	1	1	0	1
Total: 1 manufacturer	42	44	34	48	52
2 manufacturers	36	34	27	27	27
3 manufacturers	16	16	26	23	15
4 or more manufacturers	7	7	13	2	6
Average number of manufacturers stocked			2.25	1.8	1.76

Source: Commission survey.

4.113. Figures on weighted penetration in confectionery (source: Mars) show that the top three manufacturers in both chocolate and sugar lines achieve weighted penetration of over 90 per cent for at least one product. This is more than in impulse ice cream where the second and third manufacturers (Nestlé and Mars) achieve weighted penetration of less than 70 per cent (see Table 4.23). Both BEW and Nestlé doubted the relevance of the comparison with confectionery: BEW on the grounds that market structure was different—the top three confectionery manufacturers all had similar market shares; and Nestlé on the grounds that ice cream was different from confectionery due to the seasonality of demand and the need to maintain the cold chain.

Rate of sale and retail penetration of different manufacturers' products

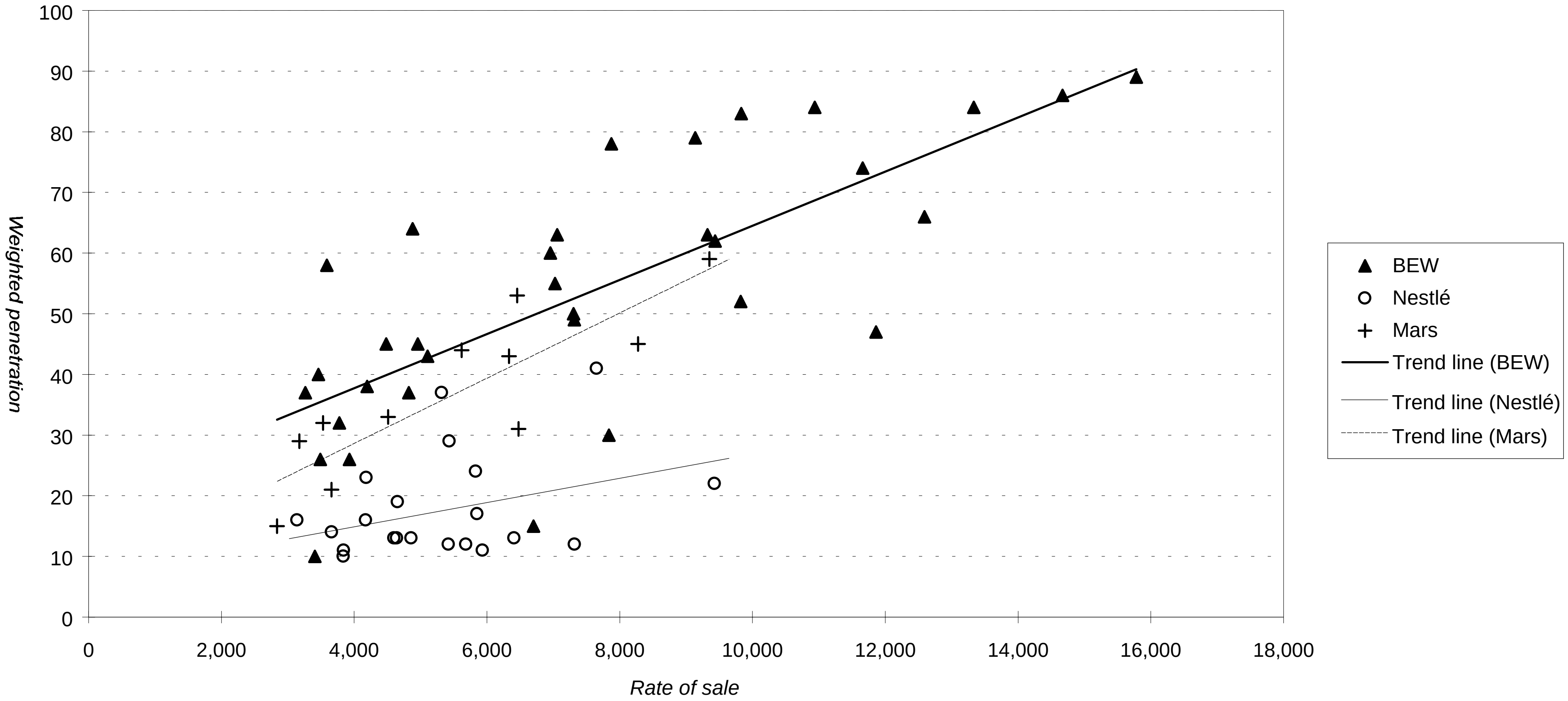
4.114. Retailers may be expected to stock the product mix that gives them the best overall sales value and hence profits, given freezer space and other constraints. Figure 4.2 shows a comparison of weighted penetration with rate of sale (sales achieved in those outlets where the product is stocked—sales divided by weighted penetrations). The following points seem to emerge from Figure 4.2:

(a) BEW's products tend to have the highest rate of sale, as well as the highest weighted penetration reflecting their popularity with consumers. In this context, our consumer survey (see Appendix 4.1) found that 56 per cent of adults and 59 per cent of children said that a BEW product was their favourite compared with 4 per cent of adults and 6 per cent of children who said a Mars product was their favourite and 2 per cent of adults and 3 per cent of children who said that a Nestlé brand was their favourite.

(b) There is some evidence that BEW products have a higher weighted penetration, given their rate of sale, than do Mars and Nestlé products. In other words, BEW products tend to get distributed from more retail outlets than do Mars and Nestlé products which sell as strongly.

FIGURE 4.2

Weighted penetration and rate of sale—wrapped singles, August 1998



Source: Nielsen data (provided by BEW).

Note: Trend lines show predicted penetration calculated from ordinary least squares regression of weighted penetration on rate of sale for that manufacturer's products.

4.115. NERA (BEW's consultants) showed us evidence that there was a similar relationship between weighted penetration and rate of sale in other impulse markets (chocolate and sugar confectionery). NERA also said that the leading sugar confectionery manufacturer was more likely than other manufacturers to have products above the best-fit line.[1] NERA noted that the sugar confectionery market was unaffected by freezer exclusivity and was a market where almost all products were delivered by wholesalers and said this suggested that manufacturers of the leading products may have an advantage in getting their product range stocked. We note, however, that another of BEW's consultants (KPMG) said that the sugar confectionery market was relatively fragmented and that none of the major players had a dominant share: on KPMG's figures the leading sugar confectionery manufacturer had only a slightly higher market share than the next two manufacturers.

4.116. It should be borne in mind that the relationship between weighted penetration, rate of sale and market share is complex. A product's popularity with consumers will determine its rate of sale and hence its retail penetration (retailers will want to fill their limited freezer space with the most popular products, subject to any constraints such as exclusive distribution and exclusive freezers). The product's rate of sale and its weighted penetration will then determine its market share. However, a further complication is that consumers may not be able to try a product unless it is readily available: if so, a product's popularity will be influenced by its retail penetration.

Effects of replacing exclusive freezers with industry freezers

4.117. Studies of the effect of replacing a single exclusive freezer in an outlet with a non-exclusive industry freezer can provide a direct test of the impact on sales of stocking more than one manufacturer's products. Mars provided us with the full results of two tests carried out in 1998. Our analysis of the results is shown in Appendix 4.9 and is summarized here:

(a) In a test with a large multiple grocery retailer, BEW freezers were replaced in some stores with industry freezers (stocking Wall's products only in the base period and then Wall's, Mars and Nestlé products during the test period) and the results compared with a control group of stores which retained their BEW freezers. Unfortunately, fully consistent results were only available for five test sites and ten control sites. The results showed that sales increased 27 per cent more at the test sites than the control sites. The average (unweighted) sales increase at the test sites compared with the control sites was 24 per cent, but there was a great deal of variation between sites and we found that the difference between test and control sites was not statistically significant at the usual 95 per cent level. The test group can be increased to eight sites if each test site is separately compared with the control group over a different period: on this basis, the average (unweighted) increase was 31 per cent. In addition, there were a number of other uncertainties associated with this freezer test.

(b) In a test with a large multiple CTN chain, Nestlé freezers selling Nestlé and Mars impulse and Nestlé take-home ice cream were replaced with an industry freezer for impulse ice cream and a separate Nestlé take-home freezer. The industry freezer sold only Nestlé and Mars products in the base period and Nestlé, Mars and Wall's products in the test period. The results showed that total sales increased 21 per cent more at the ten test sites than at the ten control sites. The average (unweighted) sales increase at the test sites compared with the control sites was 23 per cent. Variation between sites was less than in the test with the large multiple grocery retailer and the difference between test and control sites was statistically significant.

4.118. Mars also provided us with some information from two further studies where Mars's exclusive freezers were placed alongside Wall's exclusive freezers:

(a) In a 1998 study in a small multiple CTN chain with existing BEW freezers, a Mars freezer was added to the BEW freezer in 22 outlets; in two outlets an industry freezer replaced the BEW freezer and in 16 outlets no change was made. Mars told us that the 22 outlets with Wall's and Mars freezers showed a sales increase of 17 per cent (compared with 1997) and the two outlets with industry freezers a sales increase of 18 per cent, while the 16 outlets with only BEW freezers showed a sales decrease of 14 per cent (similar to the overall market decline in 1998).

[1]NERA showed us no analysis by manufacturer for chocolate confectionery.

(b) In a 1996 study in an operator of motorway service stations, Mars's 1.5 metre freezers were placed alongside BEW freezers in ten sites and the results compared with ten sites where no Mars freezer was added. The BEW freezers contained 19 lines and the Mars freezers 12 lines. Total sales at the test sites increased by 23.3 per cent compared with the control sites.

It should be noted that, in these cases, there was an increase in the amount of impulse ice cream freezer space which may have affected sales.

4.119. The Commission's 1994 report referred[1] to a 1992 trial showing a 15 per cent increase in sales where there was an industry freezer compared with sales from outlets with separate BEW and Mars freezers. The Commission's report also noted that the retailer involved (Martin[2]) subsequently said that the trial results had not been confirmed by experience over a longer period and in a wider range of outlets, where the increase in sales was between zero and 2 per cent. It should be noted, however, that this experience relates to the replacement of two separate freezers with an industry freezer selling similar products: it is not necessarily relevant to an assessment of the effect of replacing an exclusive freezer with an industry freezer selling products of more manufacturers. The Commission's 1994 report also reported that the retailer regarded the move to a single freezer as worthwhile because of better utilization of space and running cost savings.

4.120. The ex-dedicated distributors have provided industry freezers to some retailers since becoming independent wholesalers. They provided us with examples of the effect on their sales, compared with the previous year (see Appendix 4.10). In all of these examples, sales increased. It should be noted that these examples were not part of a controlled test.

International comparisons

4.121. BEW provided us with extensive data on ice cream markets in other OECD countries. This is shown in Appendix 4.11. Among the points of note are:

(a) In-house distribution and exclusive concessionaires (similar to BEW's former dedicated distributors) are used in many countries, although not the USA and Japan.

(b) Exclusive manufacturer-owned freezers are used in many countries, but not to any great extent in the USA, Japan, Australia or New Zealand.

(c) Unilever has over 40 per cent of wrapped singles sales, and is the largest supplier in all EU countries except Spain and Greece (where it is the second largest supplier and has a share of about 30 per cent) and also Finland and Luxembourg (where no information is available). Unilever also has a large share of wrapped singles sales in a number of other OECD countries including Australia, Canada and Switzerland.

(d) Consumption of wrapped singles is relatively low in the UK, but consumption of multipacks is relatively high.

4.122. BEW also commissioned a study by NERA of prices and profitability of Unilever impulse ice cream in European countries. As shown in Table 4.26, at the time of the NERA study (June 1999), Wall's RRPs were 6 per cent above Unilever's European average. Using January 1999 exchange rates, however, Wall's RRPs were similar to Unilever's European average. Use of January 1999 exchange rates was preferred by NERA as this was nearer to the time 1999 prices were set and it was generally accepted that the pound was 'overvalued' in relation to other European currencies in June 1999. NERA found that differences in retail ice cream prices tended to reflect differences in the general price level, as shown in the fourth column of Table 4.26 (France is an exception).

[1] Paragraphs 3.78 and 8.25.
[2] Now part of TM stores.

TABLE 4.26 **Price of wrapped singles ice cream relative to the UK**

Country	*Unilever RRPs* June 1999*	*Unilever RRPs* January 1999*	*General price level—all goods, January 1999*	*Unilever net proceeds of sales per litre 1998*
Austria	90	98	100	73
Belgium	84	89	95	93
Denmark	116	118	120	89
France	140	152	103	86
Germany	93	102	103	84
Greece	82	87	78	79
Ireland	76	83	90	69
Italy	68	74	84	56
Netherlands	84	91	97	73
Spain	81	90	77	64
Sweden	92	87	108	96
Switzerland	109	116	126	103
UK	100	100	100	100
Average	94	99	99	82
Exchange rates £/euro	1.534	1.424	1.424	1.450

Source: NERA study (commissioned by BEW).

*Based on average (unweighted) prices (excluding VAT) of Magnum Classic, Cornetto, Winner Taco, Solero, Calippo.

4.123. On the basis of the January 1999 exchange rate as noted above, BEW's RRPs were similar to Unilever's European average. They were nevertheless higher than those in eight out of twelve other countries and 5 per cent higher than the average excluding France, where RRPs are much higher than elsewhere for unexplained reasons. BEW's board minutes for 25 January 1999 stated, in explaining why no increase in BEW's prices was possible (see paragraph 4.86 above), that 'we were expensive on a European comparison basis'.

4.124. Comparisons of RRPs reflect the retailer's margin[1] and any wholesaler's margin as well as the manufacturer's net proceeds from its sales (NPS). The final column of Table 4.26 shows a comparison of Unilever's 1998 average NPS per litre. This shows that NPS per litre in the UK is above average but it should be noted that the comparison is affected by the treatment of distribution costs and product mix.

4.125. Lower manufacturer's prices in other European countries can lead to attempts to import from those countries by UK distributors and/or retailers if the price difference more than offsets transport costs. On this matter we received the following information:

(a) [

Details omitted. See note on page iv.

]

(b) A distributor[2] told us that, because of a long-term domestic stock shortage on major Wall's product lines, it had imported several container loads from a French distributor and had been able to supply its retail customers plus other wholesalers far more cheaply than they were able to obtain the product from BEW itself. This was confirmed by two other distributors who told us that they had been able to obtain Wall's Magnum Double, at a time when it was unavailable in the UK, and other products (such as Solero) at a gross margin of over 19 per cent from that source (while the £1.10 distribution deduction represented a margin of only about 8 per cent on these products). The importing distributor told us that, as a result of a tip-off from BEW, Miko (Unilever's French

[1]Excluding the effect of any pricing above RRP.
[2]Heat & Eat (Southend) Ltd.

subsidiary) placed a block on supplies to the French distributor from which its ice cream was sourced. Specifically Miko had threatened to cease supply of all ice cream products unless the distributor ended the arrangement. The importing distributor subsequently told us that, during August, it had obtained further supplies from Spain and Holland and in both cases its supplier was threatened with having its further supplies cut off and abandoned future dealings.[1] BEW told us that Unilever had a clear policy not to attempt to prevent parallel importing, and recent instances of products not being available from elsewhere in the EU reflected shortages across the European supply chain of those particular products.

4.126. NERA also compared Unilever's profitability across its European impulse ice cream operations. The measure of profitability used was the net margin (profits before interest and tax as a percentage of NPS) of the 'marketing unit': this excluded any profits and losses from Unilever's factories which could have distorted comparisons between exporting and importing countries. This comparison showed that the UK's profitability was about average. Additionally, NERA's analysis showed some evidence of positive correlation between profitability and both Unilever's sales per capita and Unilever's market share, possibly reflecting economies of scale in marketing and selling: a simple regression of Unilever's profitability on Unilever's sales per capita and its market share showed that neither was significant but the relationship with per capita consumption was slightly stronger.

[1]The suppliers stood out because of the enormous increase in their sales.