CHAPTER 2

T Wall and Sons (Ice Cream) Ltd and other subsidiaries of Unilever Ltd supplying reference goods

Unilever ice cream companies

58. T Wall and Sons (Ice Cream) Ltd (Wall's) is a wholly-owned subsidiary of Unilever Ltd (Unilever) and became the managing agent of, and of only, the ice cream business of T Wall and Sons Ltd in 1955, when the meat and ice cream businesses of that firm were formally separated. T Wall and Sons developed from the 18th century pork butcher's business of the Wall family and in 1920 was acquired by MacFisheries which itself became a Lever Brothers subsidiary in 1927. Wall's is one of the two major companies manufacturing a comprehensive range of all types of ice cream and water ice product which are distributed to every type of outlet throughout the United Kingdom. Its products are sold by a network of over 60,000 trade outlets and constitute a leading national brand. Other[1] Unilever subsidiaries concerned with sales of ice cream are Treat Investments Ltd (Treats) and Walls-Whippy Ltd described in paragraphs 130 to 139 and 126 to 129. The activities of two other companies with a part to play in the ice cream business, SPD Ltd which is wholly-owned by Unilever and Total (Investments) Ltd which is jointly owned by Unilever and Lyons Maid Ltd, are described in paragraph 85 and Chapter 4.

Organisation and management

59. The subsidiaries of Unilever operate with a high degree of autonomy from their parent company. Unilever monitors the performance of its subsidiaries and exercises a broad overall control. Five Year Plans and Annual Estimates (Annual Operating Plan and Capital Budgets) are drawn up by the companies and require formal approval by the parent. At monthly, quarterly or other intervals Wall's reports to Unilever on past and projected sales, trading profits, cash flow, capital employed and other financial matters. Major capital expenditure (above £75,000 on any one item in the capital budget and above £37,500 on any one item of out of budget capital expenditure) must be specifically authorised and higher management and Board appointments are subject to approval by the parent company. Certain financial, scientific research and personnel functions are provided by the parent organisation as well as assistance in relation to such matters as pensions and conditions of employment, insurance, taxation, government relations, management consultancy etc.

60. Wall's is managed by a Board of six Directors, all of whom are full-time executives. The Chairman of the Board is the Chief Executive of the company

[1] HB Ice Cream Ltd a company incorporated and manufacturing ice cream in the Republic of Ireland is a wholly-owned subsidiary of Unilever Ltd which supplies ice cream in Northern Ireland and, to an insignificant extent, in the rest of the United Kingdom.

with overall responsibility to Unilever for its performance. The other five Directors and the Corporate Planning Manager report directly to the Chairman. The company has a centralised Operations Planning Department whose task is to plan, on an annual, weekly and daily basis, the physical activities of the company in the light of the Company Operating Guidelines agreed by the Board each year as the equivalent in physical terms of the annually agreed departmental budgets in financial terms.

61. Wall's told us that its principal objective as a business is to achieve real growth (ie growth in net output or value added) subject to the achievement of an adequate return on capital (see paragraphs 105 and 246). Specific yield and growth objectives are decided each time it updates its Five Year Plan. Judgment of efficiency of the Wall's business as a whole is based on performance against the objectives. Direct efficiency measurement is carried out on a structured basis centred round the Unilever planning system of Five Year Plan, Annual Estimate and quarterly and monthly results referred to above. At the company level volume performance against target is measured taking account of weather[1] variations and market and competitive forces and financial objectives are examined in terms of a pyramid of appropriate[2] ratios deriving from return on capital. At the departmental level, efficiency is under routine control in relation to such factors as sales by product and outlet, margins, variances from standard costings and expenses against annual departmental budgets and operating standards established by work-study methods. An Operations Efficiency Department keeps all company operations under continuous examination and the company is subject to management and efficiency audits by the Internal Audit Department of Unilever.

62. Wall's informed us of exchange of information arrangements between itself and Lyons Maid which have come to an end. From 1965 to 1973 sales turnover figures for each line of branded products were exchanged between them. Originally the arrangements had also comprised a scheme for inter-firm comparison involving the exchange of information every two years relating to costs, sales and profitability but this was brought to an end in 1969. After

[1] Like Glacier, Wall's employs a system of weather-correction to its actual sales data (sometimes described as 'normalisation'). This is based on the difference between the actual and expected average temperature related to a 30-year historical experience. The weather-sales relationships have been revised from time to time using regression analysis and different components of weather have been examined but it has been found that elements other than temperature do not advance accuracy. The effect of weather on sales is of a much lower order in any calendar year as a whole than in any one week, in which it is of a very high order, although it is the latter effect which governs the actual selling situation at the time.

[2] These are:

Capital employed	:	Net sales value (NSV)
Fixed assets	:	Capital employed
Working capital	:	Fixed assets
Stocks	:	Sales
Debtors	:	Sales
Trading profit	:	NSV
Prime cost	:	NSV
Variable profit	:	NSV (in total and by product trade Group)
Expenses by major functional heading	:	NSV

1973 the exchange was limited to volume figures of sales of a number of broad categories of product until the arrangement was concluded at the end of 1975. During the arrangements the accounting and marketing staff of the two companies discussed the information exchanged for the purpose of establishing that the figures were on a comparable basis. Otherwise, Wall's and Lyons Maid have not engaged in recent years in any discussions of general commercial matters between themselves.

Development of Wall's business

63. Wall's has had a market share and a presence in retail outlets of major proportions for over 40 years. A major development in the modern history of the ice cream industry took place with Wall's installation of a small ice cream plant imported from the USA in its Acton factory in 1922, as a means of dealing with the seasonal problems resulting from the reduction in meat sales during the summer months. The business developed on the basis largely of Wall's own designed production and distribution equipment. This was the first time in Britain that ice cream had been factory-made, pre-hardened and wrapped for mass distribution, branded and retailed through a network of outlets. The product was an immediate success. It was distributed mainly through tricycle salesmen ('Stop me and Buy one') using insulated boxes with solid carbon dioxide refrigerant ('dry ice').

64. By 1939, in addition to the meat factory and a bacon factory and slaughterhouse at Acton, West London, Wall's had factories at Acton and at Godley, Manchester, making ice cream and also the dry ice used in the storage of ice cream both in retail shops and in tricycles and vans. Wall's had over 8,000 tricycles, selling ice cream direct to the public, the tricycles being supplied from 136 depots, which also served some 15,000 retail shops. The range of products included brickettes (square pieces of ice cream for consumption between two wafers), tubs, bricks (the modern half litre) and Snofrutes and Snocremes (triangular water ices in cardboard packs). Turnover in 1939 was approximately £1,500,000.

65. After the War it was impracticable to resume the tricycle operation on any scale. In the early post-war years the main marketing development on the ice cream side was the substantial expansion of wholesale supply to CTNs. For this purpose, it became necessary for Wall's to provide the CTNs with mechanically refrigerated cabinets—a substitute for the pre-war insulated box using dry ice. Wall's also re-established a retail operation, selling direct to the public by vans, and by 1963 the number of such vans had reached 950.

66. In 1949 Wall's opened a third ice cream factory at Craigmillar, Edinburgh. With effect from 1 January 1955, the management of the meat and ice cream businesses of T Wall & Sons Limited was formally divided by appointing, as managing agents of those businesses, two wholly-owned subsidiaries of Unilever Limited, namely, the company now called the Wall's Meat

Company Limited, for meat, and T Wall & Sons (Ice Cream) Limited, for ice cream. In 1959 Wall's opened a fourth factory at Gloucester. In 1961 and 1962 respectively the factories at Godley (Manchester) and at Craigmillar were closed. Between 1962 and 1964 the head office was transferred from London to Gloucester. The Gloucester factory was highly mechanised and automated, employing a computer for a large variety of tasks, and in layout and method[1] was claimed to be the largest and most modern of its kind in the world. The range, complexity and variety of products was greatly increased, often with the utilisation of machines developed with Wall's own design and engineering resources which are still in use at the Acton and Gloucester factories, and emphasis was laid on product innovation. After the growth of the market had suffered a severe setback in the early 1960s from several bad weather years and the imposition of Purchase Tax, Wall's adopted more sophisticated techniques of market research to identify the need for new products and gave increasing attention to the development of ice cream sales in larger grocery outlets.

67. Wall's claims that it pioneered the development of the ice cream trade in grocery outlets. Following the growth of competition in bulk ice cream at low prices in the early 1970s a number of strategies, including the use of Treats as a second brand (without compromising the main brand), were examined and rejected. Sales to the bulk sector were developed by both Wall's and Treats, and Wall's says that it made the most significant product innovation in this area[2]. Wall's pointed out that a rapidly expanding part of this trade (ie home freezer centres) generally requires a relatively smaller and simpler range of products and considerations of price outweigh other considerations (eg of product quality, innovation and brand reputation) but Wall's has also carried out considerable development work on more specialised dessert products, as well as on confectionery items. In the latter respect, it is seeking to develop new distinctive confectionery[3] lines, aimed more specifically at the adult market, with a view to assisting small shops to retain a significant volume of sales.

Wall's range of products

68. The varied extent of the range which is currently marketed can clearly be seen from the price list which is reproduced at Appendix 1. Wall's con-

[1] Unilever 1945-65 Charles Wilson, Cassell 1968 page 170.

[2] 'Soft Scoop' ice cream which is similar to traditional hard ice cream but the inclusion in it of an additive enables it to be easily scooped out of its container even when the container has just been removed from the freezer cabinet in which it has been stored. This was launched in 1975 and followed by Glacier and later others. In 1976 it accounted for 84 per cent of Wall's bulk ice cream purchased through retail outlets. Wall's said that it enabled it to retain a substantial share of the grocery market against lower priced unbranded products and own label products and to supply the product into those areas of the traditional trade (see paragraph 19) that serve 'scooped' ice cream.

[3] 'Cornetto' (a wrapped, factory made premium price cone) was re-introduced into the United Kingdom market in 1976 beginning with imports and later with production at Gloucester followed by Glacier ('King Cone') in 1977 and Treats; the 'World of Flavours' range of cream based, scooped products, incorporating expensive flavourings was launched in April 1977.

veniently divided up for us their January 1977 lines[1] into five product groups as follows:

	No. of lines	Percentage of total litres produced (1976)	Comment
Confectionery	41	30·6*	includes soft ice cream mix, multi-packs, cups, cones and stick products
Dessert	20	28·1	includes 1 litre packs, family sweets, complete desserts
Catering	16	4·2	includes individual specialities, multi-portion specialities
Bulk	22	21·6	2 and 4 litre packs
Own label	41	8·1*	
	140	92·6†	

* Includes production for Treats.
† Balance of output is mousse (non-reference goods).

69. Wall's told us that new lines are added from time to time since its experience was that the maintenance of its business depends to a material extent on the introduction of new products. Old ones are discontinued when they fail to achieve what is regarded as an adequate volume of sales and no re-formulation can be devised which, given the competitive conditions, can enable the product to provide an acceptable 'contribution' to unallocated expenses and profit. Wall's also explained that the total number of its branded lines on the market had declined between 1972 and 1976, reflecting the general decline in the proportion of consumer sales made through CTNs and cinemas and the relative unprofitability of sales of catering lines, although new products had been regularly introduced over that period. It continually tried to maintain a balance between avoiding unnecessary costs associated with a wide product range and the need to market a variety of products to meet different consumer requirements at different retail outlets.

Wall's sales

70. A detailed account of Wall's trading performance over the period 1972–77 is contained in paragraph 243. In broad outline Wall's sales in 1976, the peak year of this period, were £47 million at net sales value[2] (NSV) and

[1] A 'line' was defined as a separate product made to its own specification or size. The price list includes a number of lines which because they serve a dual purpose are listed more than once under separate headings and some non-reference products.

[2] Net sales value = standard wholesale value less discounts and bonus. Sales to Treats are not included but some sales of non-reference goods and sales to the Channel Islands could not conveniently be excluded but do not materially affect the totals. SWV sales exclude own label products.

£58 million at standard wholesale value (SWV). At 1971 prices the figure corresponding to the former was £24 million (actual 1971 sales being £22 million). Sales by volume in 1976 were 115 million litres.

71. About half of the 1976 sales by value were of confectionery products, one-quarter of desserts, approximately one-seventh of bulk and the balance mainly catering and own label products. In 1971 the proportions were 52 per cent confectionery, 31 per cent dessert and the balance bulk and catering products. In 1976, 53 per cent by value was sold through CTNs, small general stores, seasonal, entertainment and mobile outlets[1] (the 'traditional trade'), some 29 per cent through supermarkets, and home freezer centres (the 'grocery trade') and the balance through wholesale catering and miscellaneous outlets.

72. Wall's explained that its business was built up to serve consumer demand through outlets in the traditional trade (and it still relied heavily on this trade for the distribution of confectionery products) but it had been compelled to develop outlets in the grocery trade over recent years and its experience was that there has been a movement towards greater discounting and from the more profitable 'impulse' to the less profitable 'take-home' sector. The process of change between outlets had continued into 1977. Thus Wall's business with the traditional trade by volume had declined from 68 per cent in 1971 to 47 per cent of its (Wall's) total sales and with the grocery trade increased from 10 per cent to 34 per cent. Sales of dessert products through small shops fell from 59 per cent to 38 per cent of Wall's total sales of those items and by 1977 the grocery trade accounted for 11 per cent of Wall's sales of confectionery products (mainly on account of the rising demand for multipacks). Wall's stressed the contrast between the rapid increase in sales of bulk packs and the virtually stagnant demand for its confectionery and dessert products, rising in good years only to fall back again in years of bad weather.

73. Wall's told us that, reflecting these trends and on the basis of its own figures of total sales in the market, its share had fallen from 37·8 per cent in 1972 to 32 per cent in 1976, that of Treats had risen from 2·8 per cent to 6·1 per cent and of other secondary manufacturers from 30·4 per cent to 38·3 per cent. It believed that the share of Glacier had also fallen. These proportions were based on figures of sales by volume and it is likely that, in value terms, Wall's share (but not necessarily Treats) was likely to have been higher. Thus in terms of sales at consumer prices, on its own estimates, Wall's believes that its share in 1976 was 35 per cent. It considers that its share of the business in CTNs, small general stores and catering outlets, and in entertainment and seasonal outlets was some 40 per cent in volume terms. It held a similar share of the grocery market and supplied one-quarter of home freezer centre demand. We discuss elsewhere (see paragraphs 47 to 50 and Appendix 4) the problems involved in estimating the total size of the market and the shares of the major suppliers.

[1] The detailed breakdown was

	per cent
CTNs and small general stores	38
seasonal	7
entertainment	2
mobile	6·2

Production

74. For production planning, accounting and administration, the resources of the two factories at Gloucester and Acton are organised as a single production unit and each factory has a range of machine types enabling it to produce the majority of the products on sale. Of the total 1976 production of 128 million litres (of which 7·3 per cent was of non-reference goods), 70 were from Gloucester and 58 from Acton.

75. The machinery consists of mixing units and freezers and filling and hardening machines. Wall's view is that machine capacity cannot be measured in terms of units of output per machine since the same machine may produce a range of products of varying sizes at varying rates per hour. It accordingly regards the most useful measure of capacity as 'shift weeks' per year, each shift week representing 40 hours utilisation of a machine. Taking into account development lead times, maintenance time and public holidays, product shelf life and the risks of changing weather[1], it puts the overall limit in practical terms for filling and hardening machines at 75 shift weeks a year. The seasonal nature of demand, however, means that the advantages gained by the intensive use of manufacturing plant are at some point outweighed by the costs of storage of out of season production and by labour costs which rise with the proportion of night shift working required; thus Wall's says it may be more economical to have several low cost machines together capable of making the amount required at any one time rather than having fewer machines, be unable to make the amount required at times of peak demand and have to produce in advance of requirements, thus incurring higher storage charges. The optimum capacity of a machine is determined by the point at which a rise in stockpiling and labour costs per unit of production, as a result of further increased utilisation, will outweigh any saving in machine costs per unit of production as a result of increased utilisation. Bearing this in mind the 'most economic' capacity for each machine may sometimes be less than the 75-week limit. The following are the types of machinery in operation:

Filling and hardening machines	*Target shift weeks per year*	*No. of units 1976*
(i) Tub filling and hardening	75	6
(ii) Bulk filling and hardening	60	5
(iii) Bands (for hardening of bars with associated wrapping machinery)	75	17
(iv) Sterile mix canning plant	75	1
(v) Gram Rias (for freezing lollies)	75	12
(vi) Carton filling and hardening	70	6

Mixing units and freezers feed the machines referred to at (i) to (iii) and (vi) above and mixing units feed the machines referred to at (v). The freezing units are necessarily proximate and specific to the production machines and work at the same rate. The mixing units must have a capacity to deliver the weekly peak demand of the production machines irrespective of the lower season usage of the latter, since ice cream mix cannot be stored for more than 48 hours. Moreover, mix storage vessels are of large unit size and are required in a multiplicity of units to accommodate the range of flavours and

[1] In exceptional weather conditions, Wall's supplements normal planned production by overtime and weekend working.

sizes required at any one time. There are 112 different sorts of ice cream or water ice mix which are stored and distributed by 37 interchangeable mixing units. Appendix 5 lists the numbers of machines and compares productive hours and target capacity by type of machine[1].

76. Wall's told us that it is a matter of commercial judgment how much productive capacity is utilised in out of season months to build up pre-season stocks. The total available capacity is intended to be sufficient to enable the company to have in stock such a quantity of each product line as will meet demands from its customers for those product lines at the time the demand arises. However, in periods of exceptionally good weather which result in exceptional demands for ice cream, it is inevitable that temporary shortages of some products will arise from time to time, since Wall's consider it would be imprudent to plan for the fortuitous occurrence of exceptional weather.

77. *Numbers employed* in manufacturing and distribution vary significantly between the winter and summer months. Total numbers employed (including managerial, sales, administration, cold store, transport staff) at Acton, Gloucester and the depots are as follows:

	As at 30 June 1976		*As at 31 Dec 1976*	
	Full time	*Part time*	*Full time*	*Part time*
Managers	218	1	219	—
Manufacturing	2,136	9	1,390	5
Sales Distribution	1,111	265	872	215
Others	412	22	391	19
Total	3,877	297	2,872	239

78. The most important *raw materials* in order of tonnage used are sugar, milk and milk powder and vegetable oil. Other materials include glucose and chocolate; butter oil; fruit products, flavourings and concentrates of various kinds; emulsifiers and stabilisers; and packaging materials. All vegetable oil and orange concentrates are obtained from two companies within the Unilever group and, out of two suppliers of emulsifiers, four of flavourings and nine of packaging materials, one of each is within the Unilever group. Purchases from fellow subsidiaries are made at arm's length.

Economies of scale

79. Wall's told us that the advantages available from its scale of operations had to be considered in relation to the need to make a wide range of products and distribute them to every type of outlet, many requiring limited delivery size and different selections of the product range, throughout the country. Wall's explained that smaller manufacturers than the major companies might well be able to operate viably but the comparative economics of the different types of business were to be sought not only in the differences of size but also in the different nature of the operations. Thus smaller manufacturers would be able to compete by supplying a narrow range of products (notably bulk ice cream) over long distances to outlets (eg freezer centres) capable

[1] Overall capacity utilisation was

	1972	*1973*	*1974*	*1975*	*1976*
%	59·1	67·3	66·9	76·7	81·5

of taking large drops of a limited number of products. Alternatively, such manufacturers might produce a wider range for delivery over a limited area. The relative outcome depended on such factors as the mix of products and the extent of the range produced, the volume of production of the items in it, the location of the depots and outlets and the distances involved, the amount of refrigerated transport and cold storage needed, the extent of full loading and the balance between drop size and distance, the establishment costs of serving the various types of outlet and, not least, the ability to cope with the variable and unpredictable nature of the demand. Thus Wall's pointed out that it was not necessary for specialist or local manufacturers to be of large size in order to operate viably but large scale was necessary to provide economically the volume, wide range and varying distribution needed over the country by the outlets supplied by its own type of operation.

80. As regards production, Wall's told us that the explanation of its own two factory situation was historical but, ideally, starting from a green field situation, it would have only one large factory. It provided evidence of considerable scale economies in the manufacture of such products as stick confections, choc bars and family bricks and explained that to produce a full range of products required a wide variety of plant types and packaging ranges and, for minimum cost production, that total output needed to be large enough to ensure that individual product runs were of sufficient length to achieve maximum production economies of scale. For instance, the unit cost of mixing decreased with the increased scale of operations because the cost of vessels increased less in proportion to scale and approximately the same amount of pipework was needed for large and small vessels. The amount of labour required for a semi-automated process did not increase with volume. For instance the opportunities for labour saving were substantial with highly mechanised choc bar plant. For stick confection machines (Gram Rias) capital costs per unit fell as the number of rows per machine increased and unit operating costs fell with the size of machine, while cleaning and changing costs made it cheaper to keep a machine for each major product line. At the hardening stage (including cold storage at the factory) it was cheaper to build one large cold store rather than several smaller ones and the space occupied by the product assembly area depended on the number of lines rather than the volume of output. On the other hand, to produce bulk ice cream competitively only required matching the volume of output to the capacity of a freezer and this was relatively easy for smaller manufacturers to achieve. Costs of distribution would tend to be reduced if a full mix of products could be supplied to depots from the factory and the diseconomy of less than fully loaded vans avoided[1]. To cover the totality of the requirements of all customers also avoids diseconomy in the use of storage space and vehicles for trunk and radial deliveries.

81. Other economies of scale to which Wall's drew our attention were the favourable implications for costs arising from its ability to reduce vulnerability to the risks arising from seasonality and variable weather by reason of its wide spread of product lines and the geographical dispersion of its outlets; its technical and financial resources and management skills facilitating the

[1] Wall's explained, however, that, currently, costs of trunk supplies to depots as distinct from radial supplies to outlets, only accounted for 2 per cent of net sales value.

development of new market opportunities which others followed; its modest level of unit advertising and marketing costs; its centralised accounting and administration and ability to maintain high standards of supervision, hygiene and quality control.

Capital investment

82. Wall's informed us that its total capital expenditure over the period 1972–76 was £9·25 million of which about £3 million was spent on the factories and nearly £6 million on sales and distribution. The latter amount included £2·4 million on the replacement of customer refrigerated cabinets and a similar amount on the replacement of sales and distribution vehicles. About 20 per cent of the total was spent on efficiency improvements in production and distribution of which the more significant developments included the installation of depot computers and the provision of a drive-in racking installation in the central cold stores. During the next few years, Wall's informed us, a major investment programme was envisaged including practically the total rebuilding of the Acton factory and the modernisation of the transport fleet and refrigerated cabinets.

Research and development

83. Expenditure on research and development on ice cream projects over the period 1972–76 was divided between Wall's development department and the Unilever central research laboratories as follows:

	Wall's Development Department £'000	*Unilever Central Research £'000*	*Total £'000*
1972	209	155	364
1973	242	169	411
1974	258	209	467
1975	262	213	475
1976	333	229	562

An important feature is product development and innovation with the prime object of introducing attractive products capable of being mass produced and difficult to imitate, although Wall's said it does not expect to be able to keep ahead for long in relation to most new products. It claims to have been first in the field with a number of product innovations based on its own development work where special expertise was important such as 'soft scoop' ice cream, ice cream chocolates, fondant coatings, 're-fill' packs of bulk ice cream, novelty ingredients including jellies, toffees and re-formed fruits.

Distribution

Sales organisation

84. Wall's gave us the following account of its sales organisation. Direct Selling Representatives (about 24) handle orders from the larger grocery and wholesale organisations where large accounts are involved. General Trade Representatives (about 110) contact important customers on average not less than once a month and all other customers never less than four times a year. Specialist Catering Representatives (6) operate in areas where there are large numbers of catering customers. The primary sales contact with customers is made by 'telesales' girls at the main depots according to a planned system

at a frequency depending on the customer's expected sales and available storage capacity (see paragraph 87). National Account Managers deal with the company's 150 most important customers.

Distribution process

85. Distribution by Wall's is largely made direct to retailers. After manufacture the products are transferred to a cold store at the factory or a cold store owned by a third party where it is held for 48 hours for analysis and clearance by the company's Quality Control department. Except where the products are then directly delivered from this cold storage to certain grocery, home freezer centre or 'cash and carry' organisations, they are then transported to one of the 15 main or 21 subsidiary depots throughout the country, six of which are owned by SPD Ltd (a wholly-owned subsidiary of Unilever). The depots hold stocks of products, make up customer's orders and deliver them to customers, the main depots providing the invoices, stock records and order replenishments etc for their own and their respective subsidiary depots, needs. An increasing part in delivery to retailers is now being played by distributive and cash and carry wholesalers. Distribution to some 5,000 smaller retail outlets has been transferred to the former and the latter provide backup facilities to Wall's customers, especially in summer peaks.

86. Between 1969 and 1976, the number of depots was reduced from 43 to 31, of vehicles from 518 to 348 and of management personnel from 177 to 106, while the amount moved rose from 96 to 116 million litres. In view of the increasing importance in recent years of grocery outlets for ice cream and the growing incidence of supply by Wall's to outlets supplied with other products by SPD, it has been decided to establish a new subsidiary company of SPD to take over the distribution of both Wall's products and Birds Eye frozen food products. It is intended to integrate the two separate systems over a period of five years.

Order procedure

87. The 'van round' and associated telephone call is planned at the beginning of the season on the expectation of an average order of economic size[1] from each customer in relation to his refrigerator capacity[2], predictability being greater for customers provided with refrigerators by Wall's. Refrigerated space is expensive and Wall's told us that the aim is to achieve maximum drop size per delivery while ensuring that the retailer's stock does not fall below the level required to cope with reasonable variation in demand. It is relatively infrequent for demand to exceed Wall's capacity to supply overall and this only occurred on certain lines even in the exceptional summers of 1975 and 1976; on these occasions, the main objective is to give priority to

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[1] In normal circumstances Wall's apply a minimum delivery quantity amounting to an average of £18 at 1978 standard wholesale value. In certain circumstances (eg bad weather) this rule is relaxed.

[2] Wall's attached importance in this connection to the obligation on customers provided with a company refrigerator to purchase from Wall's at such times and in such quantities as are reasonable having regard to the refrigerator hired to them. For the implications of this in relation to the issues involved in the practice of providing 'tied' refrigerators see paragraphs 318–9. Wall's has estimated that, for each £100 of sales, customers with their own refrigerator require 11 per cent more contacts and deliveries than customers supplied with refrigerators by Wall's.

those who rely on Wall's exclusively for ice cream products and for whom the retail supply represents a major part of their summer activities (eg Wall's-Whippy franchisees and seasonal customers), while maintaining so far as possible planned deliveries in response to regular orders. Under normal conditions, vehicle routes are planned with a view to the lowest mileage in relation to call frequencies for each customer based on expected seasonal sales and target deliveries, taking account of available refrigerator space. Thus the system relies on knowledge of the amount of refrigerated space available for storage on customers' premises. Wall's informed us however, that while deliveries were planned at regular intervals, the system and costings had to contend during the course of a normal year with a rate of 'non-planned' deliveries which could be expected to reach a maximum of 35 per cent. In bad weather the number of cancellations of planned orders exceeded the telephone orders for additional deliveries and in good weather it was the other way round.

Outlets

88. The following are the numbers of the various types of outlet serviced by Wall's in 1976 as compared with 1967:

Type of outlet	*1967*	*1976*
Confectioners, tobacconists, newsagents	21,120	17,620
General stores, small grocers	29,500	16,530
Seasonal outlets, kiosks	4,550	3,490
Cinemas, theatres, bingo halls	1,050	870
Supermarkets	720	5,060
Home freezer centres	—	980
Institutions	2,930	2,910
Expensive restaurants	3,810	3,060
Economy restaurants	4,280	2,200
Canteens	3,370	3,110
Cash and carrys	—	500
Wholesalers	—	230
Mobile vehicles	1,000	1,200
	72,320	57,750

Wall's supply agreements with retailers

Standard agreements for the supply of ice cream and the loan of a refrigerated cabinet

89. Under its existing agreement, the company agrees to supply a cabinet, to remedy any defect or want of repair as soon as reasonably possible after the customer has notified the company of it and to insure it against damage by fire. No direct or consequential liability of any kind arising out of defect or want of repair is accepted but the customer is advised to insure[1]. The company agrees to supply ice cream and water ices at reasonable times and in reasonable quantities and may terminate the agreement on one month's notice if sales through the cabinets are below £300 per annum at wholesale

[1] The facilities of the Barnwoods Insurance Co (paragraph 215) are available but not mandatory.

value[1]; the company incurs no liability through failure to supply due to industrial action or temporary shortage and no liability for any consequential loss whatsoever. The customer agrees to pay the wholesale prices fixed from time to time and not to use the cabinet for any purpose other than storing the products supplied by the company, but there is no restriction on the supply of other products from the outlet in which the cabinet is installed (as distinct from the cabinet itself). The customer agrees to co-operate in promotion schemes and the like. The agreement is terminable by either party on six months notice. Agreements of this kind have been entered into with new customers after 1 January 1975.

90. Until 1 January 1975 this type of agreement precluded the customer from selling any other ice cream or water ice products or frozen confections than those supplied by the company, whether or not stored in the cabinet, by wholesale, retail or otherwise and from selling the company's products by wholesale or from a vehicle. The agreement was to remain in force for 5 years and thereafter from year to year unless terminated by either party on one months notice expiring at the end of the fifth or any subsequent year. Since 1 January 1975 such 'old' agreements have not been entered into and Wall's policy is to treat all of its customers who remain subject to the 'old' agreements in the same way as those who, since 1 January 1975, have signed 'new' agreements.

91. There are some 37,500 agreements with customers, 'new' or 'old' type, under which refrigerators are supplied. Wall's told us it is their policy that all such customers should be required to use the cabinet exclusively for products supplied by the company. Agreements with CTN shops, general trade outlets, small grocers and caterers, entertainment and seasonal outlets take the standard form but agreements with larger customers, specially in multiple grocery outlets, are usually incorporated in correspondence. Wall's said that, while company policy was to enforce the observance of the requirement in all cases, it was rarely necessary for measures beyond explanation and persuasion to be taken, since customers accepted the logic of Wall's position.

Standard agreements for the supply of ice cream to customers who provide their own refrigerated cabinets

92. Agreements made since 1 January 1975 remain in force from signature subject to six months notice of termination by either side and the company is entitled to terminate on one months notice if sales fall below £200 at wholesale value or if the customer commits any breach of the terms of the arrangement. In other respects their provisions are substantially the same as those contained in the 'new' cabinet loan agreement described above but there is no exclusive supply restriction on the customer who is free to stock his own refrigerator as he wishes or supply competitive products from the outlet as well as those of Wall's. There are approximately 10,000 agreements, 'new' or 'old' type, with customers who do not have company owned refrigerators, the great majority being in the form of the standard agreement although the

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[1] The company also has the right to terminate if the customer commits any breach of the terms of the arrangement.

agreements with larger customers are incorporated in correspondence. Many of Wall's smaller continuing customers make annual purchases which fall short of the £200 figure.

93. Until 1 January 1975 this type of agreement also contained exclusive supply provisions. The customer who purchased from Wall's, even though owning his own refrigerator, was precluded from selling ice cream, water ices or frozen confections other than those supplied by Wall's and could not sell Wall's products by wholesale or from a vehicle but only from a retail shop. The agreement was to remain in force for 5 years as described in paragraph 90. Since 1 January 1975, such 'old' agreements have not been entered into and Wall's policy is to treat all of its customers who remain subject to 'old' agreements in the same way as those who, since 1 January 1975, have signed 'new' agreements.

94. Although there are relatively few 'old' agreements in respect of which the original term has not expired, many of the foregoing types of agreements run on from year to year over a long period. Strictly speaking, moreover, the legal obligations of customers under the 'old' agreements remain at present as prescribed under those agreements. However, Wall's have told us during the course of the inquiry that it was their intention specifically and positively to bring to the notice of all their customers, after the publication of the Commission's report, the new form of agreement including, of course, the provision that the period of notice required to bring the agreement to an end was reduced to six months and the other changes described above and in the following paragraph.

95. In this connection Wall's informed us that it would make certain other modifications to the form of agreement. These are to be as follows:

- (*a*) [1]to provide expressly that the customer may obtain Wall's products from any source;
- (*b*) [1]to provide that, in the event that Wall's fails to deliver within 24 hours of a scheduled delivery day, the customer may obtain supplies to meet his needs from any source, until his next scheduled delivery—provided that, once Wall's has delivered to the customer, he will, if so requested sell any remaining quantities of other manufacturers' products to Wall's at the prices he paid for them;
- (*c*) to make clear that the provision that the customer shall pay whatever wholesale prices are determined by Wall's from time to time simply means that the customer shall pay the prices ruling at date of despatch;
- (*d*) to remove the provision that Wall's is entitled to terminate the agreement on one months notice if purchases fall below a stated level (there is to be simply the six months notice provision on either side);
- (*e*) to drop the exclusion of liability for consequential loss by the supplier for failure to supply.

[1] These matters only arise where a refrigerator is provided.

Agreements with larger customers

96. Both before and since 1 January 1975, Wall's has entered into agreements with some 23 larger customers by exchange of letters in which Wall's is granted exclusive or semi-exclusive rights of supply, whether or not refrigerated cabinets have been provided by the company. The customers include operators of seasonal sites, grocers and wholesalers and eight are in the area administered as National Accounts (see paragraphs 117 and 118). Sales to these customers at standard wholesale value amounted to nearly £2,800,000 in the period January-October 1977.

Agreements with wholesalers

97. Exclusive rights of wholesale distribution within defined geographical areas are not granted to wholesale distributors nor are exclusive rights to supply retained by Wall's save in respect of the provision of refrigerators or as referred to in the preceding paragraph.

Supply of refrigerated cabinets to customers

98. Wall's supplies refrigerated[1] cabinets for the storage and display of its ice cream products to a wide variety of outlets usually at an annual rental of £1. As at 19 November 1976 a total of 58,756, of varying types and sizes according to the needs of the premises in question, had been installed in the various types of outlet. Three-quarters of this number were supplied to CTNs and small general stores and catering and institutional outlets, by far the larger proportion being to the former two, the remainder to seasonal, entertainment, grocery, and other outlets.

99. Wall's told us that its policy was to encourage customers to obtain Wall's refrigerators where genuine distribution economies were to be obtained by virtue of the security of Wall's access to the refrigerators. Wall's also said that its policy was to supply refrigeration equipment normally to CTN, entertainment, seasonal and catering outlets, in the first three of which ice cream is the only frozen product sold; to encourage other retailers and particularly grocery multiples (which frequently acquired and sited their own cabinets in relation to their need for refrigeration space as a whole) to utilise their own refrigeration; but to supply cabinets to supermarket, grocery self-service and cash and carry outlets when competitive pressures made it necessary; and not to supply refrigeration of any kind in future to home freezer centres. Customers not supplied with refrigerators received better bonus terms than those who were (see paragraph 115), the published terms taking account of the costs of provision less the additional distribution costs which Wall's considered it incurred on average through own refrigerator customers, although there was no practicable way of achieving an exact equivalence.

Competitive methods

100. Wall's told us that it was its policy to seek to acquire additional outlets with significant ice cream sales or the potential of developing ice cream

[1] Refrigerators are classified into open and closed types. Open display cabinets known as Merchandisers and Gondolas are for self-service use in CTN and supermarket outlets. Closed cabinets have hinged or sliding lids which can be transparent (Visitops). The capacity ranges are: small (0–6 cu ft), medium (6–12 cu ft), large (12–18 cu ft), extra large (18 plus cu ft).

sales, whether previously serviced by Lyons Maid or anyone else or a new opportunity altogether, but there was a limit on the salesmen and other resources, which were increasingly expensive, that it could afford to deploy. To change an account was more expensive than to increase sales through a good existing account (bearing in mind the costs of moving cabinets) and in certain areas it was better to concentrate on improving existing turnover than to seek out small stores with only £200/£300 purchases.

101. Each member of the sales force was expected actively to canvass about 100 competitor-held accounts a year but was not permitted to discount the terms offered by an existing supplier unless these were less favourable than the appropriate standard terms of Wall's. Tight control was exercised by Wall's Head Office over any departure from the standard terms and, while the field sales force would normally deal with CTNs or small independent grocers, sizeable accounts were dealt with by annual negotiation at Head Office. Generally, Wall's sought to avoid any charge of inducing a breach of contract during the currency of any exclusive supply agreement between a potential customer and a competitor. In 1976 Wall's gained about 700 new outlets from competitors representing about 5 per cent of the 14,000 outlets being canvassed.

102. Wall's told us that there were no formal or informal arrangements or understandings with Lyons Maid about these matters and their competition was not conducted on lines of moderation or mutual restraint. During the years 1972–76 some 3,000 outlets[1] were lost to Lyons Maid and other competitors (about three-fifths to the former) and over 4,600 outlets gained (about one-half from the former).

Pricing

Price lists

103. The Wall's price list (Appendix 1) sets out the standard wholesale price per pack and, where appropriate, the recommended retail price per single item in terms of each separate line of dessert, confectionery, bulk and catering products. In a separate Wall's-Whippy price list, prices are calculated by deducting 30 per cent off Wall's standard wholesale prices and retail prices equivalent to those in the main price list are recommended. The Bulk Pricing Deal is a special arrangement limited to bulk products and multipacks in quantities for delivery on a single occasion from 300 to 5,000 litres at prices varying with quantity at levels well below standard wholesale prices. List prices are delivered prices whatever the location of the customer.

Price review

104. Preliminary decisions about the extent to which the company would require, and in the face of competition, feel able to take up price increases

[1] We have been unable to reconcile the Wall's and the corresponding Glacier figures (see paragraph 192). This may be due to differences in the periods covered but also differences in recording. The Wall's figures exclude cases where shared supply was involved or outlets supplied via a central delivery point. Glacier pointed out that outlets which an original supplier has lost may not be so readily identified as lost to a competitor; the loss may be attributed to some other cause, eg the outlet has failed to purchase the minimum quantities required for the original supplier to continue to deal with him direct.

allowable under current counter-inflation legislation (and their timing) are included in the Annual Estimate produced in September or October for discussion and review throughout the winter in the light of developments. Wall's told us that ideally prices would be set in the following spring for the whole season but more frequent changes have been necessitated in recent years by cost inflation and the provisions of the Price Code. Wall's (like Glacier) announce price increases to the trade some weeks in advance of the date on which they are to become operative but until the trade has been informed, Wall's said that it had no knowledge of the nature or timing of any prospective price increases by Glacier and did not itself give information to Glacier about its own prospective price increases.

Objectives

105. Wall's explained to us that its main objective in setting its prices was to offer good value for money and to be competitive on price as well as on product formulation, quality, service, etc, both with other suppliers' ice cream and with other competing products. At the same time, Wall's had to pay regard to the required return on capital and considered that a minimum acceptable return was 8 per cent post-tax at replacement cost on a standard Unilever basis applied to weather-corrected profits (ie in good weather years the rate should exceed 8 per cent to compensate for a shortfall in bad weather years).

General results

106. Wall's told us that in practice over the 5 year period 1971–76 competition and price control[1] had prevented it achieving the 8 per cent objective referred to in paragraphs 105 and 246, despite what it regarded as substantial improvements in efficiency, although in the long run it believed it remained necessary to do so in order to maintain modern and efficient production and distribution facilities on the scale required to meet demand. Wall's calculated that, as a broad indication of the movement in prices, the Standard Wholesale Price (less an adjustment in respect of Purchase Tax in 1971 and 1972) of its products rose by 100 per cent over the years 1971–76 on an average year-to-year basis by reference to the average price per portion. Over the period its average raw material costs (not including fuel costs) rose by 115 per cent and average wage rates for hourly paid workers by 127 per cent. During the same period the Retail Price Index rose by 96 per cent. The following are figures for food manufacturing as a whole:

		per cent
1971–76	Index of wholesale prices	+110
	Index of raw material and fuel costs	+136
	Wage rates for hourly paid workers (food, drink and tobacco manufacture)	+135

Relative generally to raw material and labour costs Wall's argued that its prices had not risen more than the wholesale prices of manufactured food as a whole.

[1] Wall's said it had usually raised its prices to the full extent permitted by rules, although the notification of price increases had on occasion been delayed beyond the minimum interval imposed by the Price Code.

Pricing factors

107. Wall's told us that pressure on trade prices from other competitors was strongest in bulk ice cream for home freezer centres or catering outlets; the products, as indicated elsewhere, can be manufactured cheaply by concentration on simple ranges for specialised outlets and considerations of price outweigh other factors such as innovation and brand reputation. There is less pressure on trade prices in areas, eg CTNs, where the range of products required is wider and where, subject to competitive consumer prices, considerations of service, product, quality, innovation and brand reputation are of the highest importance. Wall's believed, however, that in this and other sectors demand for ice cream was affected by its price relative to that of other competing goods particularly non-frozen confectionery and frozen and non-frozen prepared desserts. Wall's said it was their experience that, within both CTNs and supermarkets, demand for dessert products was sustained only where perceived by the purchaser to represent good value for money when compared with other dessert products. It regarded this as a major constraint and accordingly aimed to contain price increases of its products to, or to less than, the increase in the Retail Price Index.

108. Wall's gave us to understand that a number of other considerations had to be taken into account in fixing prices. It said that it could not price in the confidence that, whatever prices it asked, other manufacturers (whether Glacier or anyone else) would follow for similar products. Equally, across its product range, while the Wall's brand generally permitted an 8–10 per cent premium over prices charged by secondary manufacturers, it could not sustain prices higher than those charged by Glacier for directly substitutable products, although in fact price pressure was generally[1] stronger in recent times from secondary manufacturers, including Treats, than from Glacier and was particularly intense in the grocery sector. In the short run, in view of the substantial proportion of fixed costs, profitability was highly sensitive to changes in the volume of sales but Wall's believed that in broad terms a 1 per cent reduction in price required an increase in volume of $2\frac{1}{2}$ per cent. It was an essential marketing requirement to maintain a range of confectionery products from around 5p to 23p and it had to be borne in mind that to increase a 5p product by 1p was an increase of 20 per cent on the retail price. Wall's said that it did not hesitate to hold down its prices if costs permitted at a level its competitors would not be able to match but it was not its policy to engage in a 'discount war' for retail outlets or to reduce prices on a permanent basis by squeezing profit margins so as to increase market share in view of the difficulty of gaining sufficient in volume to recompense and, of course, in poor weather conditions a price reduction could not significantly affect the amount consumed. Nor was it Wall's wish 'to become a monopoly by sweeping all before us'—it was better to move ahead by reducing costs through the more efficient use of resources and by 'creativity' in innovation with new or improved products.

109. Wall's also told us that it does not reduce its prices in particular localities to meet competition in those localities but would do so on a national scale if the effect of such competition was sufficiently widespread, since its

[1] July 1978.

policy was to maintain uniform delivered prices on a national basis. Wall's added that generally speaking a change, upwards or downwards, in the weight of an ice cream product would make a very minor difference to the end price in view of the substantial on-cost in distribution. Products were sometimes made bigger at the same price as a marketing advantage but a number of products were the same size as those of Glacier, eg iced lollies, choc bars.

Pricing of different lines

110. Wall's told us that its prices for different ranges and individual products all reflected the fact that it was performing a number of economically distinct functions to which substantially different costs were attached for which it was necessary to charge substantially different prices and a broad distinction could be drawn between its confectionery and dessert lines on the one hand and bulk ice cream on the other. Thus, after prime costs and allocated expenses have been taken into account, the confectionery and dessert lines were expected to make a higher 'contribution' to unallocated expenses (about 15 per cent of NSV, including central administration and general expenses, advertising and promotion, research and development and the charge on Wall's for services rendered by Unilever). Further factors affecting these items were that higher 'contributions' are expected from distinctive products which involved effort in product development; sophisticated products in which a greater than average capital investment had been incurred; products to which a relatively greater risk of proving unsuccessful was attached; and products which had a greater vulnerability to weather variation. Pricing policy was also affected, as indicated above (paragraph 108) by the need to include in the confectionery range different products that would retail at prices to suit different pockets and differences in contribution arose because the wholesale price must bear an appropriate relationship to a retail price expressed in units of 1p. Wall's also emphasised that differences in 'contribution' could arise because of competitive pressures.

111. Wall's told us that the prices of products supplied under customers' own labels are based on competitive quotations in separate negotiations against agreed volume assumptions and reflect the importance to Wall's of obtaining the business having regard to available capacity and seasonality of sales, the bargaining strength of the purchaser, costs of delivery and stockholding, differences in quality compared with the comparable Wall's branded products and the fact that no advertising or promotional support or refrigeration is required. They are supplied only to large purchasers of Wall's branded products. Generally prices are increased in line with and at the same time as prices of the comparable branded product.

Recommended Retail Prices

112. Retail selling prices are recommended by Wall's for (i) confectionery lines and (ii) dessert lines sold through CTNs and general stores (yielding a gross distributive trade margin at SWP of about the 24 per cent that is traditional for this trade) (iii) blocks of one litre suitable for slicing sold through grocery outlets and CTNs and general stores (at the 19 per cent traditional for grocery trade items). Other Wall's products sold primarily through the grocery trade (eg complete desserts, specialities, bulk ice cream) and catering products are not subject to a retail price recommendation.

Discounts and bonus

113. Wall's grants bonus (ie a payment made retrospectively at the end of the year usually by reference to the annual turnover) and discounts (ie deduction off the invoice so that the amount of the invoice is reduced by the discount). The company does not give cash discounts. The system is complex and reflects commercial pressures as well as the diverse types of outlet for Wall's products in terms of the nature of the business in question, the place of ice cream products within it and the type of products stocked. Some types of customer receive bonus and discount (eg wholesalers, freezer centres), others bonus but no discount (eg CTNs, seasonal outlets) and others discount but no bonus (eg supermarkets, entertainment outlets).

114. *Bonus payments* are in most cases on a stepped[1] scale and in the other cases on a sliding scale. Higher bonus percentages are paid where the customers provide their own refrigerated cabinets but the amount of the percentage difference decreases as turnover increases (since to a considerable extent provision of refrigeration is a fixed cost which does not vary in proportion to increases in turnover). Bonus is in some cases calculated by reference to the turnover of individual sites and in other cases by reference to the average or aggregate turnover of all the sites in a chain. Bonus entitlement is retained by customers terminating their agreement with Wall's prior to the year end.

115. Wall's told us that the stepped bonus scale reflects the advantages to the company of increased turnover more accurately than the sliding scale. The difference was less significant in the past when the sums involved were lower but after the late 1960s bonus granted to new trade categories was on a stepped basis and CTNs and small general stores and small caterers (the 'general trade'), but not multiples for competitive reasons, were transferred to this basis in 1975. There was a 15 per cent uplift to the turnover bands in 1976 in the general trade bonus scale and in all bonus scales in 1977 to take account of inflation. There was a further uplift of 10 per cent in 1978 applicable to all. Apart from this there have been no major changes in the bonus system since 1960. The current (1978) standard bonus scale for customers with annual purchases of £251 or more (at Standard Wholesale Prices) as published in the price list is as follows:

£ per site per Annum (excl VAT) Stepped scale	*Where Wall's refrigeration installed*	*Where customer's own refrigeration installed*
	%	%
The following amount 0–140 at the rate of	1¼	6¼
The following amount 141–450 at the rate of	3¾	6¼
The following amount 451–725 at the rate of	5	7½
The following amount 726–1,100 at the rate of	6¼	8¾
The following amount 1,101–1,450 at the rate of	7½	10
The following amount 1,451–1,900 at the rate of	10	12½
The following amount 1,901 and above at the rate of	12½	15

[1] The relevant percentage is payable on the appropriate band of the customer's purchases, as distinct from a sliding scale arrangement in which all the bonus is related to total purchases at the highest level achieved over the period.

These terms apply in practice only to customers who do not qualify for better terms, in effect CTNs, general stores and caterers with up to three ice cream outlets. Wall's indicated that bonus is granted to encourage greater sales (and also because the trade was historically conducted on a cash basis, making it administratively impossible to provide other forms of additional remuneration). Multiples in this trade (operating more than three outlets) receive similar terms on a sliding scale calculated on average turnover per site (as an incentive to higher site turnover and drop size). Other types of buyer receive bonus at different rates depending on a number of factors including whether discount is also paid, sometimes calculated by reference to the turnover of individual sites and in other cases by reference to the aggregate turnover of all the sites in a chain.

116. *Discounts* were mainly introduced in 1968–69 when ice cream came to be sold to the grocery trade and through wholesalers. Credit terms were common and outlets such as supermarkets and home freezer centres which do not normally follow the Wall's recommended retail price, wished to be able to set their own selling prices on the basis of known trading margins for ice cream as for other goods. There are standard discount scales issued to sales representatives for the different categories of customer such as supermarkets, freezer centres, cash and carry and distributive wholesalers, and entertainment outlets. The rates vary from 5–20 per cent[1] in accordance with such factors as the type of the outlet, its traditional treatment, the number of sites, the lines generally purchased and whether bonus is also applied. The terms for supermarkets and self-service stores sometimes include an element of bonus or overriding discount.

National Accounts

117. About 170 of Wall's customers are treated separately as National Accounts. These include the large grocery and home freezer chains, wholesalers, CTNs, catering and leisure entertainment multiples. In 1976 these customers accounted for purchases of about £22 million at standard wholesale value (SWV)[2] representing 38 per cent of Wall's total turnover to third parties[3]. Fifty-one of these (of which 26 were grocers) had a turnover above £100,000 in Wall's branded products.

118. National Account Managers have the responsibility for negotiating with these customers, working by reference to two alternative scales applicable to grocery and CTN outlets, one based on total turnover of the customer and the other on individual site turnover, involving both discount and sliding scale bonus. The scales serve as guidelines for the negotiation of individual agreements with or without minor variations from the scale. All the accounts are specially negotiated in this sense and the customers generally buy on terms more favourable than the Standard Terms described in paragraph 116. In addition, a number of customers obtain terms involving an effective discount

[1] Entertainment outlets traditionally receive a higher rate of discount as they are outlets responsible for a high volume of winter trade and with a predictable demand.

[2] Discount and bonus paid to National Account customers as a percentage of total SWV was 22·1 (1973), 21·6 (1974), 22·1 (1975), 24·4 (1976).

[3] 'Third parties' are companies other than, with certain exceptions, Unilever companies.

rate which is significantly more favourable (ie a minimum of 2 per cent better) than they would have obtained had they been on the 'guideline' scales. Fifty-four out of the 170 National Account customers, representing 18 per cent of Wall's total third party business obtained such terms in 1976. This tendency is most evident within the grocery group where the most powerful purchasers are to be found[1]. It was, in fact Wall's experience that an increasing proportion of business had tended to go through high discount channels, specially national grocery organisations.

Bulk pricing deal

119. This is an alternative pricing system under which discount[2] and bonus is not paid. It applies only to a limited range of products such as bulk packs of 2 litres and above and multipacks and establishes net prices varying with size of order from 300 litres upwards to 5,000 for delivery to a single site on a single occasion. It is intended to reflect the economies associated with large drops of near 'commodity' items (as distinct from small drops of a wide variety of items).

General

120. Wall's explained to us that it had been unable to set the level of discounts and bonus so as to correspond directly with the cost of supplying each of their customers. This is because it was essential to use them to safeguard the company's competitive position in the retail market in relation to the prices offered by other suppliers and to encourage customers to sell more of the company's products in order to attain turnover targets indispensible to the achievement of a satisfactory return on investment. It is also due to the unpredictability of the orders placed by individual customers, accentuated by weather-induced fluctuations in demand. Thus the costs of supplying the changing requirements of individual customers changed from week-to-week and day-to-day but overall production and distribution resources had to be planned so as to enable individual requirements to be met economically as and when they arise. Wall's told us that its policy is to arrange its total costs of supplying the products generally required by each category of customer, including discounts and bonus, so as to obtain from each category a reasonable contribution to profits.

121. Wall's also informed us that an experiment in 1969 by two selected depots replacing the bonus system with a scheme for drop discounts on a single delivery increasing with size was not successful. Customers objected to the discrimination in favour of those with larger refrigerated storage capacity and held back on orders in order to obtain higher discount, thus running down stocks and requiring more supplementary deliveries.

[1] There are no National Account scales for leisure/entertainment and catering outlets, although for reasons of administrative convenience many small customers in these categories are dealt with by the National Accounts system. Leisure/entertainment outlets have traditionally enjoyed the most favourable Standard Terms of all outlets and none in 1976 obtained terms 2 per cent or more better. A large number of caterers obtained in 1976 specially negotiated terms involving an effective discount rate 2 per cent or more better than the Standard Terms. About 84 per cent of Wall's business with leisure/entertainment outlets was with 7 customers and 61 per cent of that with catering outlets was with 2 accounts with multiples of outstanding importance.

[2] A few customers buy whole supply van loads which, if mixed, are delivered at the 5,000 litre rate for bulk deal products and a negotiated discount for the others.

Advertising and Promotion

122. The following table sets out Wall's advertising and promotional expenditure for 1972–76:

	1972 £'000	*1972* NSV %	*1973* £'000	*1973* NSV %	*1974* £'000	*1974* NSV %	*1975* £'000	*1975* NSV %	*1976* £'000	*1976* NSV %
Media advertising	570	2·6	510	1·8	437	1·5	370	0·9	783	1·6
Point of sale advertising	303	1·4	583	2·1	726	2·5	494	1·2	475	1·0
Sales promotional expenditure	108	0·5	42	0·2	69	0·2	75	0·2	233	0·5
Total	981	4·5	1,135	4·1	1,232	4·2	939	2·3	1,491	3·1

Note: Media advertising figures include a small amount spent on non-reference goods whereas NSV excludes non-reference goods.

123. Wall's told us that media advertising is related selectively to individual products or specific groups of products offered for sale under Wall's name, the object being generally to draw the consumer's attention to new products or established products recently improved. It is largely carried out on TV but the weekly colour press and local radio are also used. Sales promotional expenditure is similarly related to products and aims at adding interest to the company's items by such things as children's competitions, prizes and giveaways for confectionery or at encouraging purchase and repurchase of desserts, particularly at slack seasons, by such methods as coupons that are normal in the grocery trade. Point of sale advertising is employed to 'signpost' an outlet where Wall's ice cream is sold, to locate the Wall's ice cream sales point within a large store and to provide a comprehensive illustrated tariff of the product range. It is particularly important in traditional outlets such as CTNs and general stores. The higher level of expenditure in 1974 was incurred in connection with the introduction of a new 'livery' on vehicles, shop boards, signs, litter bins and stationery. In addition, temporary price reductions are made available on a national or regional basis or to individual retailers as part of a larger price reduction made by them. The reductions are normally made on take home items to encourage sampling of new or improved products or to give a fillip to sales at the beginning or end of the season. The amounts involved have been:

Temporary price reductions 1972–76 (£'000)

1972	*1973*	*1974*	*1975*	*1976*
23	20	18	231	174

124. In broad terms, Wall's stated that two-thirds of its advertising budget in 1977 was directed towards increasing impulse and family sweet sales through CTNs. The following table more precisely distinguishes certain types of expenditure between types of products where this is practicable.

Wall's advertising and promotional expenditure (£'000) by product* type

1975	*Confectionery*	*Desserts*	*Bulk/catering*	*Unallocated*	*Total*
Media advertising	140	220	6	4	370
Point of sale advertising				494	494
Sales promotional expenditure	45	10	20		75
Total	185	230	26	498	939

1976					
Media advertising	503	280			783
Point of sale advertising				475	475
Sales promotional expenditure	58	152	11	12	233
Total	561	432	11	487	1,491

* Wall's explained that the point of sale advertising is not susceptible of division between product groups since it is primarily directed to displaying the presence of the brand at the site. The division of media advertising expenditure depends upon the relative incidence of the product innovations it is sought to advertise and of sales promotion expenditure and temporary price reductions on the changing commercial situation since they are designed to establish or re-establish consumer awareness of particular products.

Temporary Price Reductions (£'000)

	Confectionery	*Desserts*	*Bulk/catering*	*Unallocated*	*Total*
1975	47	80	73	31	231
1976	13	48	17	96	174

125. Wall's stated in 1977 that it accounted for about 60 per cent of total ice cream industry advertising expenditure.

Wall's-Whippy Ltd

126. Wall's-Whippy Ltd is wholly-owned by Unilever and trades as a managing agent for T Wall & Sons Ltd. It acts entirely through independent franchise operators using 'Mr Whippy' and/or 'Wall's' trade marks on mobile vending vehicles and no longer does any van selling itself.

127. After the War, Wall's direct retail selling operation was conducted from mobile vans selling 'hard' ice cream products. Difficulties arose from carrying on this operation side by side with the main Wall's wholesale business from one set of depots. In 1963 Wall's-Whippy was formed by merging the retail van selling operations of Wall's with those of Mr Whippy Ltd a leading 'soft' ice cream company owned by Fortes Ltd (now Trust Houses Forte Ltd) each with a 50 per cent interest. In 1966 Unilever acquired the Fortes share in the company which in 1974 ceased to trade on its own account, its assets being transferred to T Wall and Sons Ltd. In the years following 1963 Wall's-Whippy continued the process started some years earlier by Mr Whippy Ltd of franchising its direct van selling operation until it had wholly withdrawn from retail operations. From then on it acted and continued to act entirely through franchisees operating under the Mr Whippy and/or Wall's trademark in a defined area. Wall's now operate in this field only as a supplier to mobile vending businesses.

Supply agreements with retailers and distributors

128. Standard agreements are made with franchise customers usually of a minimum duration of 3 years: unless the agreement is terminated at the end of that period by 6 months notice by either party, it continues indefinitely subject to 6 months notice to expire on 1 October (the end of a summer selling season). The company permits the customer to use the relevant trade marks in relation to the sale of ice cream, soft ice cream, ice lollies and similar frozen confectionery from approved vehicles within the permitted territory by retail only and undertakes not to authorise any other customer to use the marks on vehicles within the territory. The customer agrees *inter alia* not to use the trade mark otherwise than in relation to the permitted vehicles and only to sell from such vehicles products supplied or approved by Wall's-Whippy (but there is no restriction on sales from other vehicles or outlets). He also agrees to purchase ice cream and soft ice cream mix to a specified value, to comply with the company's recipes and instructions in preparing the products and not to operate within one hundred yards of a Wall's customer. There is no provision for relaxing the exclusive purchasing requirement during periods when Wall's cannot meet the full demand but, at those times, franchisees are accorded high priority in the allocation of supplies.

129. About 1,200 vans are operated under a Wall's-Whippy franchise and it is not known how many other mobile vans sell Wall's ice cream. None of the vans is supplied with a refrigerated cabinet by Wall's. Franchisees are free to obtain their vehicles from whatever source they wish but Wall's-Whippy has an arrangement with a specialist manufacturer under which about 100 vehicles are manufactured and sold to Wall's-Whippy each year for subsequent sale to franchisees, bulk ordering achieving some cost savings which are passed on to the purchaser.

The Treats companies

130. There is no direct shareholding by Wall's in Treats. 'Treats' consists of three operating subsidiaries of Treat (Holdings) Ltd (Treat Holdings), namely Treat Products Ltd of Leeds, Hulleys Dairy Ltd of Sheffield, Taylors (Bilston) Ltd of Willenhall. In 1969 Treat Investments Ltd, a wholly-owned subsidiary of Unilever, acquired 80 per cent of the capital of Treat Holdings (then independently owned but at a previous time owned by Fortes Ltd), subsequently increased to 85 per cent, the balance being held by the Treats' management. At that time Treat Holdings owned two of the operating subsidiaries and acquired the third (Taylors) in 1973.

131. At the time of its acquisition Treats' main business was the seasonal production of iced lollies for the mobile trade but it has since developed into a year round producer, concentrating on these products and on dessert and especially bulk packs. It buys in choc bars and certain stick products it cannot economically manufacture from Wall's and from two smaller manufacturers. Treats has no *direct* trade with small CTNs and does not provide refrigerated cabinets to its customers or recommend retail prices or require exclusive supply contracts. Its brand name is not widely promoted and it only advertises to the trade, not to the consumer. It relies on Ross Frozen Foods, which has a national distribution fleet, for the distribution of some

of its products, especially iced lollies but 70 per cent of its products are distributed through wholesalers for further distribution to all types of outlet including mobile vendors. It operates a number of its own large refrigerated vehicles for delivery to wholesalers (including mobile wholesalers), freezer centres and larger supermarkets. In 1976 35 per cent of its products were finally sold through mobile vendors and 57 per cent through home freezer centres. Its sales have substantially expanded in recent years (see paragraphs 254–255). They increased by value from £940,000 in 1971 to £4·5 million in 1976 and by volume from 7,200 litres to 22,270 over that period. About 7 per cent of sales in 1976 were of bought-in products. Some 60 per cent consisted of bulk and dessert, largely the former, and the balance confectionery (mostly iced lollies including multipacks). Compared with the two major suppliers 1976 sales were:

	£ million	*million litres*
Treats	4·5	22
Wall's	47	115
Glacier	37	85

Treats was the third largest United Kingdom supplier after the two majors and, on Wall's estimates, accounted for approximately 6 per cent by volume and 4 per cent by value of the total market. Its main product groups were divided into the following number of separate lines as at February 1977:

	Number of lines	
Confectionery	25	mostly iced lollies including multipacks
Bulk	24	2, 4, 10 litre and 4 gallon sizes
Dessert*	15	
	64	

* Includes small quantity of non-reference goods.

Production and distribution

132. Treats' factories are at Leeds, Sheffield and Willenhall. Total numbers employed at July 1976, the seasonal peak, were 279, 19 and 46 respectively producing in 1976, 8·3, 4·25 and 6·6 million litres. The differences in numbers reflect the different product types. For instance, Leeds (as well as providing the company's main cold storage, distribution department and the head office) predominantly produces the more labour-intensive iced lollies and other stick confections while Sheffield produces bulk ice cream in its simplest and least labour-intensive form. Willenhall produces desserts as well as bulk of which the former is more labour-intensive. Total numbers of staff at July 1976 were:

Production	271
Distribution	50
Sales	12
Managers	11
	344

Capacity figures compared with 1976 production were:

Million litres

	*Capacity**	*Production*
Leeds Bulk	4·8	2·3
Water ices	8·0	6·0
Willenhall	5·8	6·6
Sheffield	4·1	4·25

* The figures are based on the assumptions that Leeds is planned to operate on a 45-week basis (with night shift production during 20 giving 65 shift weeks) and the other two on 54 shift weeks (allowing 10 hours 'normal' overtime during 20 weeks of the summer season). The distribution of the production of bulk ice cream in 1976, as between three factories, was affected by the relative availability of skilled labour and a major factory overhaul at Leeds.

Treats delivers to all parts of the country from the central cold stores in Leeds through five depots, four appointed distributive wholesalers (who have first option to make deliveries to customers in their areas but not exclusive rights) and secondary wholesalers. Treats has a small sales force but does not enter into formal supply agreements. The representatives' function is to seek new outlets, particularly in small supermarkets and home freezer centres, and negotiate terms.

Economies of scale

133. Treats markets a limited product range to a limited number of outlets and obtains economies of scale which arise from specialising in this narrow field of production and distribution. It does not consider that it could economically extend its range substantially or offer a fuller distribution service to all types of outlet on its present scale of operations. Treats conducted a sales and distribution test on direct supply to CTNs in the early 1960s and concluded that to be viable this operation would have needed a different kind and bigger size of business (requiring product range, promotional back-up, refrigeration and delivery facilities) the investment for which, including developing the ability to meet variable peak demands, would have exposed it to unacceptable risks.

Pricing

134. Treats expects each of its products to make its proper contribution to the company's overall objective of producing an adequate return on capital employed. In order to arrive at the contribution, Treats produces a statement of estimated costs for each product group showing (*a*) discount and bonus (*b*) prime cost (*c*) expenses, the sum of which is deducted from the list price. The calculation is necessarily inexact since it is not possible to allocate discounts or expenses exactly based on a statement of estimated costs but it acts as a guide. Pricing decisions are made in accordance with a similar timetable to that of Wall's starting in the Autumn with a view to introduction in the following Spring with the object, if practicable, of maintaining prices for the season. In pricing to wholesalers, Treats takes account of the need to be represented at the lowest price levels (especially in the children's iced lolly market) and consequently may accept a lower margin. There is no published scale of discounts or bonus and individual terms are negotiated with each customer. There is only a very general relationship between individual discounts and bonus and the costs of supplying the customers concerned. There is no explicit discount related to individual or average drop size and the outcome reflects market and competitive pressures as well as expected

delivery requirements. The sales representatives have a considerable measure of discretion as to departure from standard terms in seeking new business, subject to prior reference beyond certain levels to head office.

Management

135. The Chairman of Wall's is also the Chairman of Treat Investments Ltd. Treat (Holdings) Ltd submits its five-year and Operating Plans for approval by the Chairman of Wall's and by Unilever and Treats then supplies monthly trading results to Unilever through Wall's. Approval by Unilever of capital expenditure appropriations above £10,000 is sought through Wall's and senior management appointments in Treats are subject to approval by Wall's. Although Wall's thus has management responsibility for Treats within the Unilever group, Wall's told us that its involvement in Treats' direction and management is limited and that Treats operates as an independent business within the Unilever group, eg as respects the management of its own cash resources, taxation, dividend policy. It initiates its own pricing, marketing, distribution and product development strategies which are approved by Wall's in terms of its annual plan on the basis of normal commercial criteria, Treats thereafter being free to implement all such agreed strategies on its own subject to its results and progress being monitored regularly by Wall's and Unilever, it being Wall's responsibility to see that corrective measures are taken where required and feasible. The review of five-year plans and operating plans involves establishing consistency as between Wall's and Treats in the relevant market assumptions but Wall's said that it is not involved in the day-to-day direction of Treats and that it broadly exercises supervisory management controls the same as those exercised by Unilever over Wall's. Unilever's own involvement is limited to the ultimate approval of Treats' plans, major capital expenditure and certain senior management appointments.

136. Wall's assured us that there was no co-ordination of pricing policy or marketing policy as between itself and Treats. It was considered that, if each developed its own initiative on pricing or anything else in seeking the best results without looking at the other at all, the combined profitability would by this means be better than if they were directed on a central policy basis. Wall's drew attention in this connection to the minority shareholders in Treats who gave it a measure of independence and also to the fact that Wall's and Treats did not refrain from competing with each other.

137. Wall's explained that the reason for the acquisition of Treats was that it gave Unilever the opportunity to enter, through an established supplier with appropriate facilities and clearly defined and appropriate costs, a section of the market in which Wall's was not widely represented and which Wall's was not ideally structured to enter. Treats sold a smaller range of products to a smaller number of customers, operated with a lower overhead cost and largely delegated the distribution of its products to wholesalers. At that time, Treats was selling mainly iced lollies to mobile operators, its sales of bulk ice cream for home freezer centres having been built up since. Wall's told us that the benefits brought about by the acquisition lay in the fact that Treats had proved an expanding and profitable enterprise since its basis of operations (large direct deliveries of a limited range of products) turned out to be ideally suited to taking advantage of the boom in home freezer centre

business. Generally, however, Treats operated in the lower price and to some extent lower quality sector of the market and Wall's considered that its strength lay in aggressive salesmanship, flexibility in negotiation and reliability of supply. Wall's emphasised that Treats was subject to exceptionally severe competition from other secondary manufacturers but its successful achievements illustrated the methods whereby smaller manufacturers could increase their share of the market.

138. Wall's however argued that, while Treats' prices were generally lower than those of Wall's for comparable items, apart from differences in quality and different patterns of bonus and discount, this was to be attributed to the different circumstances and requirements of the two companies. It was in Wall's view inappropriate to seek to compare Treats' list prices (wholesale) with Wall's standard wholesale prices for comparable products. Treats' list prices were prices to wholesalers or other customers taking substantial quantities, but Wall's list prices were those of a company which itself carried out the wholesaling function, and which must cover in its prices the costs of selling, distribution and administration incurred in direct distribution of its products to some 60,000 trade outlets, mainly retail outlets throughout the United Kingdom. Further, whereas Wall's relied to a large extent for promoting its sales on its brand preference with the consumer and, as the market leader, looked to the introduction of new products to maintain its competitive position across all types of outlet, Treats relied mainly on 'commodity' trading. Treats was therefore mainly 'trade orientated', whereas Wall's concentrated on its brand franchise. The marketing policies of each company were therefore geared to these objectives and this included pricing and other promotional activities such as, in the case of Wall's, advertising both indoors and outdoors. Wall's pointed out that these differences had become less sharply defined with the expansion in the sales of ice cream by the large grocery chains which sell bulk lines, including those produced by Wall's.

139. Wall's stated that the closest price comparison that could be made would be in sales to similar customers, ie of Treats' confectionery products to wholesalers in the mobiling business and those of Wall's-Whippy to people in the franchising business who are not strictly speaking wholesalers but operate large fleets of vehicles. The list prices of Wall's-Whippy and Treats are therefore more comparable than the list prices of Wall's and Treats. The discounts in operation varied with the size of the mobiling business, but Treats would normally be selling products similar (though rarely identical) to Wall's products at something like an 8 to 10 per cent discount from the Wall's-Whippy prices, which is what Wall's would regard as being the normal premium in respect of the Wall's brand.