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#### NOTE

From:	Trio Presidency
To:	Working Party on Competitiveness and Growth (High Level)
Subject:	Territorial Supply Constraints: A business-to-business obstacle for the Single Market

Delegations will find in Annex a Trio Presidency paper on “Territorial Supply Constraints: A business-to-business obstacle for the Single Market”, in view of the discussion of the Working Party on Competitiveness and Growth (High Level) on 25 April 2024.

High Level Group on Competitiveness – meeting on 25 April 2024

**A true Single Market for business-to-business relationships: the case against Territorial Supply Constraints (TSCs)**

Achieving a well-functioning Single Market is the responsibility of all players within that market, both public and private. An element of the business-to-business Single Market that has so far been neglected is TSCs.

**Definition**

TSCs are restrictions imposed by certain suppliers which prevent buyers from freely sourcing goods, particularly in countries of their choice.

**Consequences**

TSCs have a number of unpleasant consequences:

- Inability to obtain supplies from the company of one's choice, whether a central platform or wholesalers located in more competitive neighboring markets offering more attractive prices;
- Buyers automatically redirected to the subsidiary responsible for their geographic market or to national wholesalers who have signed territorial contracts with the suppliers in question;
- Market fragmentation and significant price differences between countries;
- Overall higher consumer prices;
- Less availability of certain products.

## Shapes

TSCs come in different shapes:

- limitation of quantities;
- limitation of the choice of country of supply;
- restriction of the transfer of products between countries;
- imposition of purchasing obligations;
- changes in packaging (often via the language used);
- prohibition of access to the entire range of products available from the supplier;
- or even linked sales techniques.

## Economic evidence building

In November 2020, the European Commission published a study on TSCs<sup>1</sup> that showed that half of EU fast moving consumer goods sellers experience supply constraints based on their location. With a degree of uncertainty, the analysis also suggested that if retailers in all the countries with higher purchase prices than the country with the lowest purchase prices could source their supplies from that country, EU consumers could save an estimated €14.1 billion (or 3.5%) on their purchases of a basket of food categories. However, it also remains uncertain to what extent wholesalers and retailers would pass on the benefit of a lower purchase price to consumers. Although smaller markets are more likely to be victims of TSCs, markets in larger Member States are also affected.

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<sup>1</sup> [Study on territorial supply constraints in the EU retail sector - Publications Office of the EU \(europa.eu\)](https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&code=sdg-8.4.1&plugin=1)

The European Commission study confirms previous findings at the level of the BENELUX (Belgium – Netherlands – Luxembourg). A recent Dutch study<sup>2</sup> demonstrates the enduring nature of TSCs. A Belgian study<sup>3</sup> on the differences in price levels with neighboring countries also points towards TSCs as a possible explanation for price differences.

The document “A Transition Pathway for a more resilient, digital and green retail ecosystem”<sup>4</sup> published by the European Commission in March 2024 also addresses the issue of TSCs.

### **Possible solutions**

The options for tackling TSCs are rather limited within the current regulatory framework. Competition law can only be used either against unlawful agreements containing TSCs under Article 101 TFEU or against unilateral actions by brands under Article 102 TFEU, but only if they were dominant on the market (e.g. the AB InBev and Mondelez investigations).

In the meantime, various proposals to tackle TSCs have been put forward:

On a regulatory level, a business-to-business variant of the geo-blocking directive is sometimes suggested as a possible solution.

Another idea is the development of a new competition tool that adds abuses due to economic dependencies to the current approach to dominant positions.

The manufacturers are not keen on regulatory initiatives but prefer an improved dialogue between manufacturers and retailers.

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<sup>2</sup> Territoriale leveringsbeperkingen, Eindrapport , Rotterdam, 22 november 2023, <https://open.overheid.nl/documenten/8bf2ebbe-c875-4715-9a44-51c06adfd7b3/file>

<sup>3</sup> In Dutch: Vergelijking van het consumptieprijsniveau in België, Duitsland, Frankrijk en Nederland: <https://economie.fgov.be/nl/publicaties/vergelijking-van-het>

In French: Comparaison du niveau des prix à la consommation des produits en Belgique, en Allemagne, en France et aux Pays-Bas  
<https://economie.fgov.be/fr/publications/comparaison-du-niveau-des-prix>

<sup>4</sup> [A TRANSITION PATHWAY FOR A MORE RESILIENT, DIGITAL AND GREEN RETAIL ECOSYSTEM \(europa.eu\)](https://economy.ec.europa.eu/a-transition-pathway-for-a-more-resilient-digital-and-green-retail-ecosystem_en)

## Suggestions for discussion

The Chair is convinced that TSCs go against everything the Single Market stands for. They lead to fragmentation, less choice, higher consumer prices and affect retailers, especially SMEs. Taking into account the sharp rise in consumer prices in almost all European Member States and in the light of our ambition to deepen and broaden the Single Market, we wish to organize a debate around the following questions:

1. Do you think that private behavior such as TSCs, which have an impact on business-to-business relations, constitute barriers to the proper functioning of the internal market and should therefore be eliminated?
  2. Which approach (enhanced dialogue, variant of geo-blocking, development of a new competition tool, a combination of previous or other solutions) do you prefer to tackle TSCs?
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