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## **WORKING DOCUMENT**

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From: General Secretariat of the Council  
To: Working Party on Competition

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Subject: Presentation by the European Commission (DG COMP): Territorial supply constraints (agenda item 5.)  
Working Party on Competition meeting on 10 October 2025

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Delegations will find in annex a presentation (agenda item 5.) given by the European Commission during the Working Party on Competition meeting on 10 October 2025.



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# Learnings from antitrust enforcement on Territorial Supply Constraints

WP on Competition  
10 October 2025

DG COMP

*"The views expressed are purely those of the writer and may not in any circumstances be regarded as stating an official position of the European Commission"*


# Today\*: a focus on unilateral practices


- Antitrust investigations have come across the three main unilateral practices reported by Member States:
  - Product differentiation
  - Refusal to supply
  - Wholesale price differentiation
- What do these antitrust investigations tell us?

*\*For a more complete view of antitrust enforcement in TSC see presentation to the WP of 16 June 2025*


# Product differentiation can materialise in many ways


 Languages on the package

 Volume/weight/unit content

 Dress (name, colour, claims, description, orientation etc)

 GTIN codes

 Different ingredients

 Different recipes

# Reasons for product differentiation are multiple



Consumer preferences (e.g. flavours)



Consumer shopping habits (e.g. frequency=>size of the product)



Legacy (e.g. names of brands)



Regulatory constraints



Preventing price reductions and arbitrage/trade between Member States



Other reasons

# Product differentiation- ideas for a way forward



Keeping scope for variety and creativity seems essential



But does that prevent reducing price differences between national markets for identical or similar products?



What kind of tools could help?

# Refusals to supply –definition of the issue

Buyers and sellers do not seem to have the same understanding of what a refusal to supply is and whether it effectively happened

For the purpose of this discussion, refusal to supply can be defined as a refusal by the seller to supply the products requested by the seller with the terms requested by the buyer

Requires a case by case analysis, using internal company documents

Refusals to supply materialise for all sizes of sellers and buyers

Buyers and sellers routinely conclude transactions involving several member states (inter alia regarding the location of the buyer, location of the seller and place of delivery)

# Reasons for refusals to supply are varied

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Disagreement between the seller and buyer on the quantities

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Disagreement between the seller and buyer on the price

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Disagreement between the seller and buyer on the trade terms (payment terms, delivery point etc)

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Unsatisfactory past experience of the seller with the buyer

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Credit risk associated with the buyer

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Concerns by the seller that the buyer may resell the products and reduce prices in one or more national markets

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Other reasons

# Refusals to supply- ideas for a way forward



Seems to require a case-by-case analysis to avoid impinging unnecessarily on the freedom to do business



Is it possible to identify the situations where the refusal is driven by an objective to prevent price arbitrage/trade between Member States and resulting price reductions for consumers?



What kind of tools could help?

# Wholesale price differentiation—definition of the issue

Price differentiation between member States is not an issue per se. There may be reasons to differentiate prices (e.g. launch of a product already established in another market)

Actions by the seller that lead to price differentiation can be an issue

Competition cases have addressed for instance situations where rebates/discounts have not been paid for exports

In some cases this was unilateral behaviour (e.g. offer subject to condition that the buyer does not export or loses the reduction)

Is this the only type of situation? What kind of justification is acceptable? More fact finding may be needed

# Wholesale price differentiation - ideas for a way forward



Comparatively more fact-finding seems needed



This is the practice most directly affecting potential reductions of prices for the consumer



What kind of tools could help?

Are some tools relevant for several practices?

# Thank you

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