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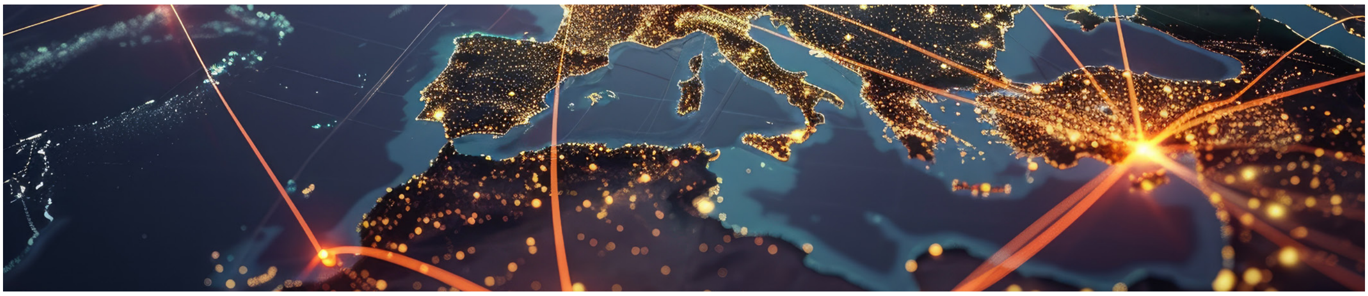
In the Spotlight

Territorial Supply Constraints

Global – March 2025



Territorial Supply Constraints (TSCs) refer to a range of practices used by brands and manufacturers that limit where retailers, wholesalers and distributors source their products – for example, preventing them from buying products from outside the country where they operate.

Critics of such constraints argue that they hinder the flow of goods within the EU's single market, leading to price differences between member states and reduced consumer choice. For brands, on the other hand, TSCs are an important means of controlling how their products are distributed and sold, and by whom, which can make supply chains more efficient and potentially lower prices.

Recent enforcement action by the European Commission (Commission) has drawn attention to a growing focus on TSCs, which can be incompatible with EU competition law in certain circumstances. Against a background of political pressure to address sustained inflation and the cost-of-living crisis, there is a growing impetus to tackle the perception – rightly or wrongly – that TSCs contribute to higher prices.

Manufacturers, wholesalers, distributors and retailers in many sectors, from fast moving consumer goods and electronics to pharmaceuticals and services, would be affected by a move towards tougher scrutiny of TSCs. In this note, we explain (i) what TSCs are, (ii) how they are currently covered by EU competition law, (iii) what enforcement action the Commission has taken against them and (iv) possible future developments in this area.

What Are TSCs?

TSCs are practices typically imposed by manufacturers of branded goods that restrict where buyers can purchase their products. An example would be when a retailer that wishes to import goods from a manufacturer's branch in another country, where those goods are cheaper, is compulsorily referred to the manufacturer's branch in their own country. TSCs can also be imposed indirectly, for example, when a manufacturer prevents a wholesaler in a country where prices are lower from supplying retailers in other countries, where prices may be higher.

By limiting where purchasers can source goods, TSCs are viewed by some as creating artificial barriers to trade between member states. Retailers and some consumer groups have argued that they lead to higher prices, since distributors and retailers cannot always buy goods from the cheapest source. A 2020 Commission study found that removing TSCs, so that retailers could always source goods where they were cheapest, could save EU consumers €14 billion annually when buying certain food products[1]. This assumes, however, that retailers will always pass on to consumers the benefit of buying products upstream more cheaply.

For many brands, TSCs are considered a necessary way of ensuring that wholesalers and distributors focus on selling products in the markets where the brands intended them to operate, rather than diverting sales to other territories. This can allow for more efficient distribution of goods and more effective marketing, which can bring prices down. Exerting control over where products are supplied can also give manufacturers a degree of countervailing power in negotiations with retail alliances, large consortia of supermarkets and other retailers that pool their purchases to maximise their buyer power and extract rebates, as well as other favourable terms from suppliers.

Some also regard the link between TSCs and higher prices as unclear, or at least more nuanced than it is sometimes presented. The fact that consumers in different countries pay different prices for the same products can be attributed to a range of factors, such as different levels of demand and relative income in different countries and varying levels of competition between retailers in different markets. Restrictions on sourcing across borders can also be unrelated to brands themselves and arise from national laws and regulations: for instance, when member states impose different labelling and packaging requirements to each other, this can limit retailers' ability to source goods from outside their territory.

1 European Commission: Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, LE Europe and VVA, Study on territorial supply constraints in the EU retail sector – Final report, Publications Office, 2020, https://data.europa.eu/doi/10.2873/59256

TSCs Under Competition Law

TSCs can be the subject of enforcement action under either Article 101 or Article 102 of the Treaty on the Functioning of the European Union (TFEU), but they are not generally prohibited. Competition law does not catch TSCs unless they are implemented through an anticompetitive agreement or imposed by a dominant company.

Article 101 TFEU

Prohibits anticompetitive agreements

This includes most territorial restrictions, with some key exceptions:

Exclusive distribution system – Distributor can be protected against active sales into its exclusive territory.

Selective distribution system – Distributor can be protected against active and passive sales by unauthorised distributors.

"**Active sales**" refers to actively approaching individual customers or potential customers to make a sale.

"**Passive sales**" refers to making a sale following an unsolicited approach or request from a customer.

But – Article 101 TFEU only applies if the TSC is part of an agreement (e.g., between manufacturer and distributor). It does not capture constraints imposed unilaterally by a manufacturer, such as a refusal to supply or limiting the language options on a product's packaging.

Article 102 TFEU

Prohibits abusive conduct by a dominant company

Therefore, it can catch constraints that are unilaterally imposed by a dominant manufacturer (i.e., they are not found in an agreement), to the extent that they are "abusive", in the sense that they risk foreclosing or distorting competition.

But – Article 102 TFEU will not capture the conduct of a non-dominant company. It is also a hard legal test to satisfy, as a complainant or competition authority must show both that the company in question is dominant and that its conduct satisfies the definition of an abuse.

Enforcement Action Against TSCs

Although competition law does not outright prohibit TSCs (see above), the Commission has conducted several investigations into restrictions on cross-border trade, and has taken enforcement action in notable cases, including those listed below.

The Commission adopted two decisions prohibiting TSCs in 2024, imposing fines in both cases, and the trend of increased enforcement is continuing: in March 2025, the Commission confirmed that it had conducted unannounced inspections (dawn raids) in the soft drink industry to investigate suspected restrictions on trade between member states.

AB Inbev (2019)[2]	The Commission fined Anheuser-Busch InBev NV/SA (AB InBev) €200 million in May 2019 for breaching Article 102 TFEU by abusing its dominant position in the Belgian beer market by hindering cheaper imports of its Jupiler beer from the Netherlands. AB InBev was found to have: (i) relabelled some Jupiler products it supplied to retailers and wholesalers in the Netherlands to make those products harder to sell in Belgium; (ii) limited the volumes of Jupiler beer it supplied to a wholesaler in the Netherlands, to restrict its exports into Belgium; (iii) refused to supply one Belgian retailer unless it agreed to limit its imports of less expensive beer from the Netherlands; and (iv) made customer promotions for beer offered to a retailer in the Netherlands conditional upon the retailer not offering the same promotions to its customers in Belgium.
Mondelēz (2024)[3]	The Commission fined Mondelēz €337.5 million for hindering the cross-border trade of biscuits, chocolates and coffee products between member states in May 2024, in breach of Articles 101 and 102 TFEU. Mondelēz was found to have breached Article 101 TFEU (the prohibition on anticompetitive agreements) by: (i) limiting the territories or customers to which wholesale customers could resell Mondelēz's products; and (ii) preventing exclusive distributors active in certain member states from replying to sales requests from customers in other member states without Mondelēz's prior permission. Mondelēz also breached Article 102 TFEU (abuse of dominance) by: (i) refusing to supply a wholesaler in Germany to prevent them from reselling products in other countries where prices were higher; and (ii) withdrawing certain products from the market in the Netherlands, to prevent them from being imported into Belgium (where prices were higher).
Pierre Cardin and Ahlers (2024)[4]	The European Commission imposed fines of €5.7 million on Pierre Cardin and its licensee the Ahlers Group in November 2024 for breaching Article 101 TFEU by restricting cross-border sales of branded clothing, as well as sales to specific customers. The Commission found that Pierre Cardin and Ahlers had entered into agreements aimed at preventing other licensees and their customers from selling Pierre Cardin-branded clothing outside their licensed territories, and/or selling to low-price retailers (such as discounters).

Policy and Regulatory Focus on TSCs

As well as increased enforcement action under competition law, TSCs have also been the focus of recent policy initiatives aimed at tackling measures that are regarded as restricting trade in the single market. Brands that use TSCs face a period of increased scrutiny, and potentially a more challenging regulatory environment moving forwards.

In June 2023, European leaders commissioned an independent report on the future of the single market. The Letta Report, which was presented to the Council of Europe in April 2024, was a comprehensive analysis of the European single market that proposed strategic enhancements to address contemporary challenges, including strategies to deepen internal market integration. Regarding TSCs specifically, the Letta Report stated the following:

> "The EU should strengthen the capacity of national authorities to tackle suspected TSCs thanks to a formal procedure common to all for cross-border cases."[5]

2 European Commission, Press Release, 'Commission fines AB InBev €200 million for restricting cross-border sales of beer', 13 May 2019, https://ec.europa.eu/commission/presscorner/detail/es/ip_19_2488

3 European Commission, Press Release, 'Commission fines Mondelēz €337.5 million for cross-border trade restrictions', 23 May 2024, https://ec.europa.eu/commission/presscorner/detail/it/ip_24_2727

4 European Commission, Press Release, 'Commission fines Pierre Cardin and its licensee Ahlers €5.7 million for restricting cross-border sales of clothing', 28 November 2024, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_6104

5 Enrico Letta, 'Much More Than a Market', April 2024, https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf

In May 2024, the then-EU Commissioner for Competition (Margrethe Vestager) announced that the Commission would undertake a fact-finding mission on TSCs to gather evidence *inter alia* on how widespread they are across the EU.[6] This followed a request from eight member states asking the Commission to eliminate TSCs, including under new powers if necessary to close the gaps in competition law. The Dutch Minister of Economic Affairs and Climate Policy, Micky Adriaansens, stated:

> "Removing trade barriers should be a key priority for the single market. This helps in keeping consumer retail prices for food and non-food products fair. Something which is especially important in times of high consumer prices. The eight member states [are] proposing a concrete way forward towards an EU ban on TSCs by amending existing or new common EU rules or instruments."[7]

Continuing this trend, in her first speech as European Commissioner for Competition, Executive Vice-President Teresa Ribera highlighted that strengthening the single market would form a key part of her mission:

> "[W]e need to complete the single market. The single market came about more than 30 years ago, but 30 years on, it is still a work in progress. Many barriers remain, often because member states do not want to give them up. […] In a fully integrated single market, companies will be better able to scale, attract investment, and compete globally. That is why deepening the single market in those industries will be top of the agenda."[8]

Conclusion

TSCs are firmly in the spotlight to an extent that they have not been for several years. This is in many ways a product of the time: there is significant political pressure at EU and national level, in light of rising prices for food and other essential items, to address consumers' concerns and tackle issues that are perceived as affecting the prices EU citizens pay at the till.

The multi-million-euro fines meted out to companies such as Mondelēz and AB InBev highlight the risks that brands face if their supply agreements or unilateral conduct create artificial barriers between EU markets. Considering the increased scrutiny of TSCs at all levels, manufacturers of branded consumer goods, in particular, would be well-advised to review their distribution arrangements and, if necessary, update them to stay compliant. Since Article 101 TFEU applies not only to agreements *per se*, but also other types of "concerted practices", brands should look beyond the terms of their contracts on paper and assess whether any of their standard practices – such as requiring wholesalers to obtain permission before selling outside their territory – could raise concerns.

Brands with strong market positions for certain products or in certain territories should also self-assess whether they could be characterized as dominant and hence fall within the scope of Article 102 TFEU. This would mean that not only their agreements/concerted practices but also their unilateral conduct could be challenged under EU competition law.

Trade associations that represent brands and manufacturers in consumer-facing industries will also want to monitor the ongoing developments in this area and consider advocacy to protect their members' interests should new enforcement initiatives, and even new laws, emerge.

With few signs of the cost-of-living crisis abating, and a renewed focus on completing the single market under the new EU Commissioner for Competition, we anticipate that TSCs will remain in focus in the short- to medium-term. Any changes to how TSCs are addressed – including a possible blanket ban, as endorsed by some EU member states – would have a significant impact on operators at all levels of the supply chain from manufacturing to wholesale, distribution and retail, and across all industries (both goods and services). At a time of increased consolidation between retailers and with retail alliances becoming ever stronger, brands face growing pressure to defend their position in the market using compliant, pro-competitive strategies.

6 Remarks made by Executive Vice-President Vestager at the press conference of the Competitiveness Council, 24 May 2024

7 Government of the Netherlands, Press Release, 'EU Member States propose approach to eliminate territorial supply constraints', 23 May 2024, https://www.government.nl/latest/news/2024/05/23/eu-member-states-propose-approach-to-eliminate-territorial-supply-constraints

8 Speech by Executive Vice-President Ribera at the CRA Annual Conference on Competition policy adapted to the new global realities, 10 December 2024, https://ec.europa.eu/commission/presscorner/detail/en/speech_24_6341

67796/03/25