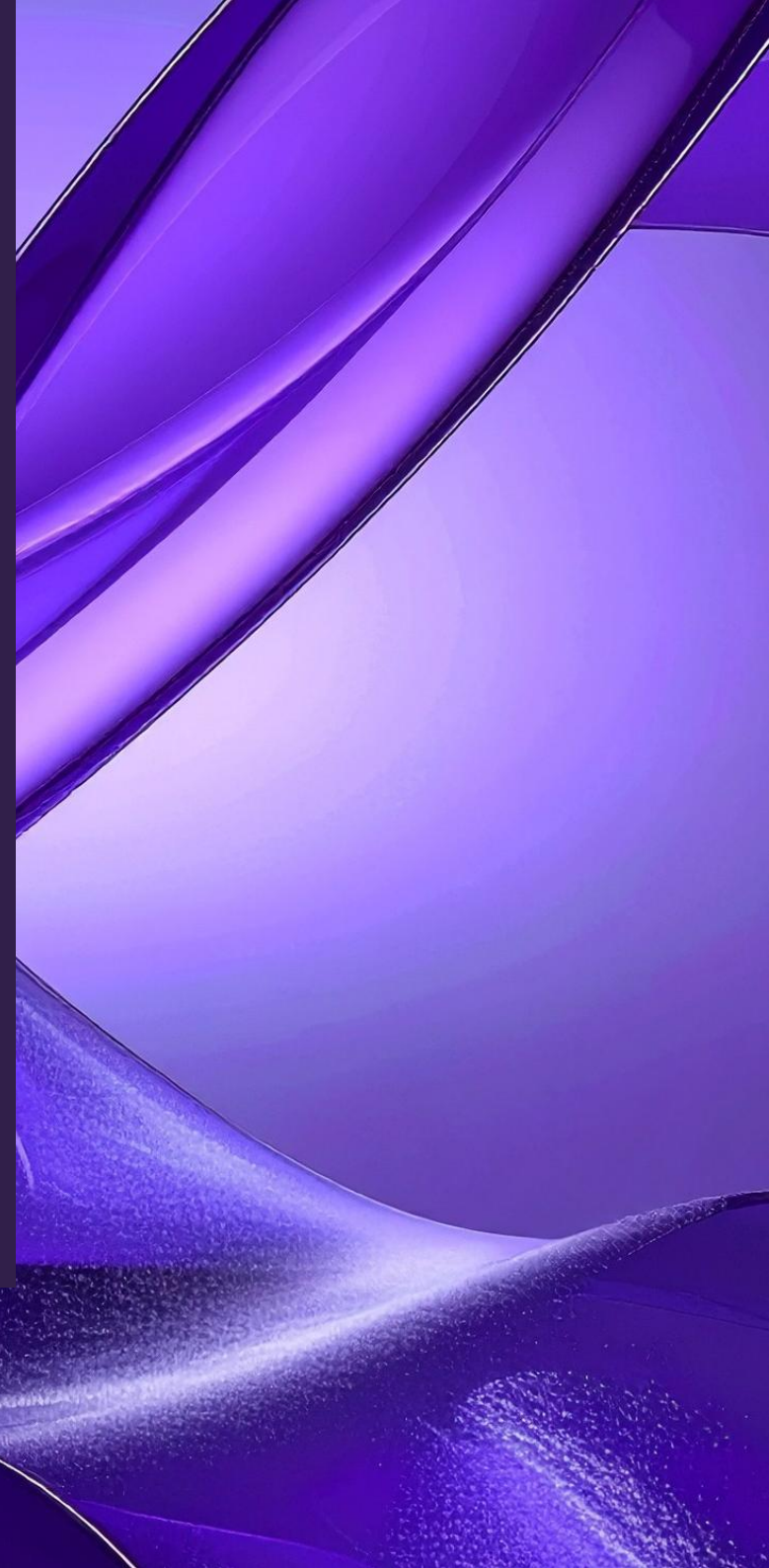


SLAUGHTER AND MAY

Breaking Barriers

The EU's push against territorial
supply constraints

3 June 2026



Amid persistent cost-of-living pressures across the EU, territorial supply constraints (“TSCs”) have risen to prominence on the European Commission’s political agenda

The Commission is now consulting on several proposals to address TSCs. We assess what these might mean for European suppliers, retailers, wholesalers and consumers.



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Territorial supply constraints

In the spotlight

Territorial supply constraints (or “TSCs”) concern practices by manufacturers and other suppliers which allegedly aim at (or have the effect of) limiting where purchasers (usually retailers or wholesalers) can source or supply goods across EU Member States.

Through its antitrust enforcement, the Commission has challenged numerous commercial practices that it considers create or reinforce barriers within the EU’s Single Market, including:

- Restricting cross-border resale of products;
- Refusal to supply to prevent parallel trade; and
- Applying higher prices for exports compared to domestic sales.

The Commission and other proponents of reform argue that unjustified TSCs artificially segment the Single Market – preventing buyers from sourcing lower priced products from other Member States, resulting in higher prices and decreased choice for consumers.

Branded goods manufacturers and others argue that TSCs can be an important strategic tool enabling them to adapt their products’ positioning to account for local market conditions, national regulatory requirements and differences in consumer demand or preferences. These can vary significantly across Member States and reflect deep-rooted historical, cultural and economic factors.

Case Study

AB InBev May 2019

The Commission fined AB InBev, the world’s largest beer producer, €200.4 million for abusing its dominant position on the Belgian beer market by hindering cheaper imports of its Jupiler beer from the Netherlands into Belgium, in breach of Article 102 TFEU.

The Commission found that AB InBev pursued a deliberate strategy of restricting imports by supermarkets and wholesalers of beer bought at lower prices in the Netherlands into Belgium, in order to maintain higher prices in Belgium. This strategy included:

- Changing the packaging, design and volume of beer products between the two countries (notably by removing the French version of mandatory information from the label);
- Refusing to supply retailers unless they limited cross-border imports; and
- Withdrawing a promotional offer in the Netherlands where the retailer sought to offer it in Belgium.

Under the microscope

Enforcement to date

The Commission has long viewed itself as the champion and defender of the EU's Single Market, and there is a long history of antitrust enforcement in this area reaching back to the earliest days of the European Union.

Recently, this has seen the Commission bring several high-profile infringement cases concerning alleged TSCs, levying total fines in excess of €550 million. This includes significant fines for AB InBev, Mondelez and Pierre Cardin, among others.

Earlier this year, the Commission conducted dawn raids of companies in the non-alcoholic drinks sector and sent a formal information request to a company active in the personal care sector, in light of concerns about possible restrictions on the trade of goods in the Single Market and market segmentation. It also raided Italian chocolate maker Ferrero over concerns it may have hampered cross-border sales between Member States.



November 2024

€5.7 million fine

Infringing practices included:

- Preventing licensees from engaging in cross-border sales of Pierre Cardin-branded clothing
- Preventing licensees from selling to low-price retailers such as discounters



May 2024

€337.5 million fine

Infringing practices included:

- Restricting resale of chocolate, biscuits and coffee products extra-territorially
- Applying higher prices for exports compared to domestic sales
- Preventing exclusive distributors from exporting without permission

NBCUniversal

January 2020

€14.3 million fine

Infringing practices included:

- Obligations to notify orders for, and redirect revenues generated from, out-of-territory sales of licensed merchandise
- Threatening licensees with contract termination / non-renewal if they sold out-of-territory
- Conducting audits to ensure compliance with restrictions



May 2019

€ 200.4 million fine

Infringing practices included:

- Differentiation in product packaging, design and volume aimed at hindering inter-state trade
- Refusal to supply in order to prevent cross-border resale
- Withdrawing promotional offers to prevent use in another Member State

Red Letta day

Political calls for action

Notwithstanding the Commission's recent enforcement activity, calls have been growing for the Commission to go further in addressing TSCs.

The publication of a 2024 report by former Italian Prime Minister Enrico Letta on the future of the Single Market put TSCs back on the EU's policy agenda, leading to calls for the Commission to go further in curbing the use and effects of TSCs.

The Commission's May 2025 Single Market Strategy identified TSCs as one of the "Terrible Ten" – one of the ten most harmful barriers to the Single Market.

The Commission identified a legal gap in the current competition law framework, which only covers TSCs when they are imposed unilaterally by dominant players or form part of restrictive agreements.

“ While competition law is an effective tool to penalise such practices [territorial supply constraints] when they are the result of agreements or of unilateral practices by dominant operators, many fall outside its scope, notably when they result from unilateral practices of large manufacturers that are not in a dominant position within the meaning of competition law.

European Commission

Communication of 21 May 2025
on the Single Market Strategy



Proposed policy responses

What options is the Commission considering?

Various policy options are on the table, with the Commission currently considering both legislative and non-legislative measures.

- **Option 1: Self-regulation** – Stakeholders would identify practices that hamper the sourcing of products from across the EU, and when these practices may be justified.
- **Option 2: Guidelines for national authorities and market operators** – The Commission would identify practices that hamper the sourcing of products from across the EU, and when these practices may be justified.
- **Option 3: Legislation based on the concept of economic dependence** – This would cover TSCs resulting from unilateral decisions by non-dominant operators (i.e. manufacturers that do not hold a dominant market position and are therefore not currently caught by EU competition law), assessed on a case-by-case basis.
- **Option 4: Legislation identifying prohibited practices**, and when they may be justified.

At this stage, the Commission is gathering evidence and views from stakeholders, including through a call for evidence earlier this year and a 12-week public consultation launched last week, to inform its impact assessment of various options. The Commission's stated aim is to develop tools to tackle unjustified TSCs by the end of 2026.

Manufacturers are the primary focus of the consultation, and the detailed questions in the consultation on whether they engage in specific commercial practices – including differentiating products or packaging by Member State, refusing to supply certain customers or markets, differential pricing based on where products will be resold, and preferring national-level rather than multi-country negotiations – signal the types of conduct that could be the target of any future action.

Retailers and wholesalers are, in contrast, asked a significantly shorter set of questions, focussed on the products they sell and whether they have attempted to source products from suppliers in other Member States. For all other categories of respondents, the central question invites views on the effectiveness of the four policy options outlined opposite.

On those policy options, the Commission will need to weigh the intrusiveness of new legislative measures against concerns that lighter touch interventions such as self-regulation or guidelines may be ineffective. While similar regimes exist in France, Germany and elsewhere, introducing new rules based on the concept of economic dependence (Option 3) would represent a significant expansion of the Commission's enforcement toolkit – and one whose impact could extend beyond the distribution of branded goods. Creating a blacklist of prohibited practices (Option 4) may be attractive for its seeming simplicity, but the Commission's experience of applying the Digital Markets Act illustrates the perils of that approach in practice.

The consultation will run until 20 August. The Commission also plans further, targeted engagement, including surveys and interviews with stakeholders.

What could this mean?

Implications for key stakeholders

The nature and extent of any impact will depend on which policy option is ultimately adopted – the gap between the most interventionist measure (a prohibition-based legislative regime) and the least (self-regulation) is substantial. Nevertheless, the consultation's structure and focus already provide some indication of the Commission's priorities and possible implications.

Manufacturers

- Manufacturers are the principal targets of the proposed measures, and as already noted the consultation identifies a range of specific commercial practices that the Commission regards as potentially problematic. Manufacturers can already start to assess their exposure against the list of practices called out by the Commission in the consultation document.
- The legislative options under consideration represent a material expansion of the regulatory framework. In particular, Option 3 would for the first time at EU level subject unilateral commercial decisions by non-dominant manufacturers to regulatory scrutiny. Manufacturers that have historically relied on their non-dominant status as a basis for structuring their territorial distribution strategies may need to revisit those arrangements.
- The non-legislative options would also have implications – self-regulation via codes of conduct or Commission guidelines would set benchmarks for commercial practices, creating reputational risk for manufacturers whose conduct falls short.

Retailers and wholesalers

- At face value, retailers and wholesalers stand to benefit from measures that reduce barriers to cross-border sourcing. Under any of the proposed options they would see their ability to purchase products in one Member State and resell them in another strengthened.
- Certain of the Commission's questions expressly reference the role of European retail alliances ("**ERAs**") – pan-EU joint purchasing arrangements which typically bring together major grocery retailers from across different Member States in order to leverage their collective bargaining power. Certain practices of ERAs, such as coordinated product de-listings, have faced criticism from branded goods manufacturers in recent years, as well as suggestions that they facilitate information exchange and market allocation. However, the references in the consultation, combined with the Commission's largely benign treatment of ERAs in the 2023 revised horizontal guidelines, suggest that the Commission may see ERAs as part of the solution rather than the problem.

Consumers

- Consumers are positioned as the ultimate beneficiaries of the proposed measures – the Commission's stated objective is to address practices that limit consumer choice and contribute to significant price differences across the EU for daily consumer goods.
- The proposals could in theory lead to greater product availability, wider choice and more competitive pricing – particularly in smaller Member States where consumers currently face more limited choice or higher prices. The fact that the Commission has asked consumers and consumer associations about the impact they expect the tools to have on them suggests consumer benefit will be key to the Commission's assessment.
- However, the previous call for evidence has already highlighted the perils of seeking to regulate TSCs, with several respondents noting the risk of unintended consequences if manufacturers are deterred from investing in growing their products in lower priced markets in order to protect their positions elsewhere.

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