

## Territorial supply constraints – what they are, how they hurt you, what to do

### What are Territorial Supply Constraints?

Large manufacturers limit what is available for sale in different countries and stop retailers seeking out the best deal in the Single Market by refusing to supply particular products or limiting the number, range or languages used on packaging.

They do this by forcing a retailer based in Country A to buy a product from a supplier's branch in Country A. The retailer cannot go to Country B or C where the same multinational supplier is offering a better price or a wider choice. Retailers have no choice but to accept the conditions put forward by large brand suppliers as they must provide consumers with the products they expect to find in stores (usually referred to as must have products).

This is true also for multinational retailers or wholesalers (i.e. that operate in more than one country) who cannot purchase products from the same supplier for all their stores across the EU, but are forced to negotiate and buy the same product at different prices in each country.

### How is this affecting consumers and when?

A Commission [study](#) from 2020 estimate that this is costing European consumers at least €14 billion.

The study only covered 4 product categories, but TSCs are imposed on many products in Europe and on retailers and wholesalers of all sizes, including SMEs.

Since 2020, we experienced close to 35% food price inflation, meaning that this figure is now likely closer to 20 billion euros just in those 4 product categories. In fact, TSCs are much broader and extend beyond consumer packaged goods to products such as textiles, electronics or pharmaceuticals.

This means some EU consumers are paying more for the same products compared to those in a neighbouring country, without this being justified by different costs or regulations, or simply cannot find certain products in their shop.

### Why is this unfair? Can the price differences be justified?

Treating retailers differently in some countries can be justified due to differences in taxes like VAT and labour costs, but as the European Commission study confirms, wide price differences cannot be fully explained by this.

On top of the fact this is costing consumers €14 billion, large manufacturers are using the Single Market to their benefit: they source their own ingredients centrally and produce in only a few factories in Europe, but then insist that retailers and wholesalers buy at national level.

## How widespread is this phenomenon?

A Commission investigation with EU Member States found evidence of TSCs in 17 EU countries, but EuroCommerce has at least some evidence of TSCs in more than 20 countries.

The investigation by the Commission into Mondelez showed that those practices took place in all EU Member States.

## If TSCs were removed, wouldn't retailers keep that extra money?

No. Because of strong competition on the market, retailers have no choice but to pass on price changes to consumers:

- When retailers make savings through alliances, they have passed them on – and there is evidence from this from various studies and the Commission's 2023 investigation;
- When retailers made savings due to VAT reduced rate in Spain, they passed on these savings – as shown by the Spanish Competition Authority.
- The intensity of retail competition was highlighted during the inflation wave, as retailers decreased their margins to keep their customers who constantly search for the best deal.

A retailer who does not have a 'must have' on its shelf, risks the customer going to its competitor. Conversely, a retailer who has a must have on its shelf at a competitive price, can attract that customer.

## Why do prices of private label products also vary across Europe?

Private label prices differ for many reasons. For example, it may depend on where they are sourced and relate to differences in the cost of ingredients, labour, taxation, logistics, or national legislation.

Retailers often source products for multiple markets **from the same supplier** (something which large brands prevent by using territorial supply constraints), enabling them to benefit from economies of scale by asking for the same specification, uniform packaging and multi-language labelling, as much as possible. This creates efficiencies and means lower prices for consumers. At other times, their suppliers may produce them locally to account for national rules or local preferences.

The differences in prices relate to explainable differences in production costs – without the question mark over unexplained differences that several studies attribute to territorial supply constraints for non-private label products.

## Would removing TSCs mean that prices will actually increase in some countries?

A EuroCommerce/DICE Study in 2019 found that by removing TSCs, prices will go down in the more expensive markets while in the cheapest markets nothing will change:

- *The manufacturer will reduce the price in country A down to the price level in country B, if the brand manufacturer does not want to withdraw entirely from the low-price market. Consumers in country A then benefit from the decrease in price whereas consumers in country B are not going to be harmed by this adjustment. All consumers are jointly better off. Moreover, the misallocation effect of price discrimination disappears (which is mirrored by the allocative inefficiency,  $Q^{**} - Q_m$ , in the high-price market A). Thus, the effect of banning TSCs and price discrimination benefits both consumer and society as whole.*

- *We think this scenario is quite likely to mirror what would happen when a ban on TSCs is introduced; namely, that it is highly unlikely that the price will be increased in the market with the high-demand elasticity because this would lead to large losses in revenues (again, prices are typically low in large countries as Germany; see ECB, 2015). But as there is no way anymore to discriminate between countries to the extent possible when TSCs are enforced, a substantial reduction of the price in the high-price market can be expected to occur. Referring to Figure 6, the manufacturer cannot, for example, decrease the price in country A and increase the price in country B, so that the new uniform price would be somewhere located in between  $p_m$  and  $p_B$ . Raising the price in country B is not attractive for the manufacturer because it would then lose its entire sales in country B, because of the very elastic demand. The larger the quantity sold in the market with the lower (discriminatory) price, the less likely it is that the manufacturer will rise the price in this market after a ban on TSCs. Put differently: Foregoing all sales in a large market would be rather “self-destructive” for the supplier’s brand name capital.*

## Why are the current rules not enough?

TSCs can only be tackled by EU competition law if they are used by a dominant operator or are contained in an agreement between different companies. However, many multinational manufacturers are large but not dominant and TSCs are often unilateral instructions occurring within the same corporate group (and hence not an agreement between different companies).

## What do we need to do now?

Last year, Enrico Letta, in his report on the Single Market, explained that renationalising markets for sourcing will hurt consumers. A few weeks ago, M. Draghi said that Single Market fragmentation within Europe was much worse than the US tariffs.

To be able to best deliver to consumers, retailers and wholesalers need a true Single Market. Yet ours is clearly a sector where market fragmentation is the norm:

- 1) We ask the European Commission to propose Single Market legislation on TSCs. There should be an obligation for suppliers to **offer** products to all customers regardless of their country of origin and not to discriminate retailers on pricing. The burden of proof that certain practices are justified should be on suppliers.
- 2) Member states should not adopt national legislation that further renationalise the market for sourcing, not impose their laws outside their national borders and seek instead to remove barriers to the free movement of goods such as labelling rules, e.g. by introducing QR codes to address language constraints.
- 3) The European Commission should be bolder in enforcing the single market and take action against infringement of EU rules which strengthen the effects of TSCs.

Further information on TSCs, their impact and all available material can be found here: [It’s high time for the Single Market to benefit all - EuroCommerce](#)