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European Union: The Single Market's Invisible Borders

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Brussels has territorial supply constraints in its sights. The European Commission has opened a public consultation on one of the most politically charged supply-chain issues in the European Union (EU). Brand owners, manufacturers and distributors should pay close attention.

The direction of travel is clear. Political support for action is broad and growing, and Brussels has set an ambitious timetable. Where this ends up, however, is far from certain. Soft measures – voluntary codes or nonbinding guidelines – are unlikely to satisfy the political appetite that has built around the issue. Harder legislative options carry real legal and commercial risk. For those who have not gotten involved already, now is the time.

Borders without barriers? Not quite

Territorial supply constraints (TSCs) are business practices that restrict customers – especially retailers and wholesalers – from engaging in cross-border arbitrage: buying products in "low-price" EU Member States and reselling them in "high-price" ones. A manufacturer in Spain, say, who receives an order from a Danish retailer may refer that retailer to its Danish subsidiary. If the retailer cannot source at the lower Spanish price, it is less able to compete on price in the higher-cost Danish market.

The EU's single market does not aim to ensure a single price for every product. But its rules on free movement and nondiscrimination are meant to facilitate cross-border trade. TSCs, in effect, partition the market along national lines. Views differ as to why they exist. Some see them as strategies by manufacturers to create and preserve fat profit margins. Others blame divergent national regulation. Still others regard them as mechanisms that balance commercial relations within domestic value chains. If perspectives differ on the disease cause, they differ on the cure, too.

Are trustbusters not enough? Not always

TSCs are not new. For decades, the Commission has wielded the EU's antitrust rules against practices that partition the single market: parallel trade restrictions, cross-border price discrimination and the like. The courts have mostly backed this approach, and a rich body of case law has evolved.

Enforcement remains vigorous. Mondelēz was fined €337.5 million for anticompetitive arrangements limiting cross-border sales of chocolates, biscuits and coffee. AB InBev paid €200 million for abusing a dominant position in Belgian beer by hindering cheaper imports of its Jupiler beer from the Netherlands into Belgium. In April 2026, the Commission sent inspectors on dawn raids at Ferrero on suspicion of market segmentation between Member States and obstacles to multicountry purchases.

Yet, despite decades of enforcement, the Commission in 2025 designated TSCs one of the "Terrible Ten" – the 10 most harmful barriers to trade in the single market. Its single-market strategy promised "new tools" to tackle unjustified TSCs beyond the reach of antitrust law, which has inherent limits. Enforcement presupposes either an "agreement" between firms or unilateral action by a "dominant" one. Investigations drag on: The Mondelēz case took four-and-a-half years; AB InBev's took six or seven. A perceived regulatory gap has been identified, particularly for unilateral practices by firms that are not dominant.

A bandwagon gathers speed

TSCs may not be new, but the political momentum for regulatory action is – and it is considerable. For instance:

- Enrico Letta, Italy's former prime minister, called TSCs out by name in his 2024 report on the single market. He argued that they recreate internal economic frontiers contrary to the fundamental freedoms of movement and the principle of nondiscrimination and recommended strengthening national authorities' capacity to tackle suspected TSCs through a formal procedure for cross-border cases.
- In May 2025 the European Parliament published a briefing paper calling TSCs "an unaddressed barrier to single market integration". It noted that regulatory progression – from partial regulation through competition law to full internal-market legislation – may be required.
- The European Council followed suit. In its conclusions of 19 March 2026, it called for measures to address the negative impact of TSCs as a high priority.

Four ways to fill the gap

On 28 May 2026, the Commission launched the next formal step: a 12-week public consultation on regulatory options, open until **20 August**. The indicative timetable for a proposal is tight: the fourth quarter of 2026.

The consultation seeks input from all stakeholders on the sources, prevalence, nature and justifications of TSCs. Crucially, stakeholders can submit evidence and real-world experience to help define the problem and shape potential solutions.

Four policy options are on the table:

- **Option 1 – Self-regulatory action (e.g. a code of conduct).** Stakeholders 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 identifies 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** that would cover territorial supply constraints resulting from unilateral decisions by nondominant operators (assessment on a case-by-case basis).
- **Option 4 – Legislation identifying a list of prohibited practices** and when they may be justified.

Brace for impact

Critics may call this a broad regulatory initiative in search of a problem. There is genuine debate about root causes – whether TSCs stem from imperfect national regulation, corporate rent-seeking or some combination of the two.

No matter. Political calls for intervention are strong. Member States, the European Parliament, the Commission and various stakeholders all want action – and an expansion of regulatory powers beyond the existing, well-oiled antitrust framework.

The regulatory options under consideration are wide-ranging, and they center on corporate business practices rather than regulatory barriers. Both suppliers and buyers of goods in the EU would be wise to engage in the consultation and the debate that surrounds it. The goal should be regulation that is well-calibrated and proportionate – aimed at real-world distortions, not a phantom menace.

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