

EU urged to introduce regulation to tackle cross-border restrictions

Bethan John

24 May 2024



Credit: Shutterstock.com/Magda Wygralak

Several member states have urged the European Commission to impose an outright ban on supplier restrictions that block retailers from sourcing identical products at lower prices elsewhere in the bloc.

Ministers from eight member states today called on the agency to plug a gap in competition law by tackling “territorial supply constraints”, irrespective of whether they’re imposed by dominant or non-dominant businesses.

The Dutch government, which supports the initiative, warned that such restrictions are only prohibited under EU antitrust law if there is evidence that a supplier has abused a dominant position.

This requires a lengthy competition probe and the burden of proof rests mainly with the retailer, it said.

These types of restrictions lead to notably different prices within the bloc for the same products, potentially creating higher prices and fewer options for consumers, as well as reducing profit margins for retailers, the Dutch government said.

Calls for a ban on these provisions come a day after the commission imposed a €337.5 million [penalty](#) on Mondelez International, which admitted to blocking retailers from sourcing chocolate, biscuits and coffee products from member states where prices are lower.

The eight member states want the next commission to create new rules or instruments to ban unfair practices that discriminate against retailers based on their place of establishment.

The Dutch government said this would allow for ex-ante regulation of such constraints and shift the burden of proof to the suppliers.

At a press conference yesterday about the Mondelez decision, EU competition chief Margrethe Vestager said she hopes the case will “work as a deterrent”, while promising “more cases in the pipeline.”

While today's proposal is primarily an internal market instrument, it chiefly concerns competition, said Herlinde Burez, a partner at Contrast in Brussels.

“If companies can reap the benefits of purchasing products at a lower price in one member state and reselling them in another, they may be able to effectively impact price competition in the second market,” she said.

The proposal to some extent concludes “that competition law doesn't do the job to remove all territorial supply constraints – so we will have an internal market instrument on the side,” Burez added.

Drafting new legislation to ban territorial supply constraints will not be straightforward, said Maverick Advocaten partner Cyriel Ruers in Amsterdam. Shifting the burden of proof from retailers to suppliers is “quite a drastic measure” that could conflict with the presumption of innocence, he added.

The proposal to ban such constraints should be underpinned by a “more fundamental debate” about the potential pro-competitive effects of price discrimination reflected in economic literature, he said.

Bethan John

Senior news reporter

Global Competition Review

bethan.john@globalcompetitionreview.com

[View full biography.](#)