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High Level Report on the future of the Single Market

Input on *territorial supply constraints (TSC)*

1. Description of the problem

*The importance of the problem on a scale from 1 (very low) to 5 (very high) is: **2**.*

Luxembourgish companies encounter commercial practices restricting their freedom to source from a seller of their choice in the Member State of their choice. This includes cases where Luxembourgish companies are compelled to go through an intermediary, often established in another Member State, imposed by the main supplier or manufacturer. Indeed, many producers and wholesalers require Luxembourgish companies to source from subsidiaries or platforms determined by their distribution network system.[1][2]

According to surveyed companies, Territorial Supply Constraints (TSC) have a direct impact in Luxembourg on increasing prices by an estimated 14% for consumer products and services offered by the company. Companies affected by TSCs in Luxembourg declare that they are compelled to offer a more limited (18%) range of products to their customers due to the inaccessibility of certain products and services. The vast majority of affected companies in Luxembourg assert that these TSCs practices undermine consumers by depriving them of a broader choice at lower costs, and also harm the company by negatively affecting its profit margins. [3]

Territorial supply constraints lead to market segmentation, limiting competition and risking significant discrepancies between wholesale and retail prices or in the choice of products offered to consumers across the European Union. These behaviours must be avoided so that retailers can simultaneously import all products that enable them to have access to the single market.

2. Root causes of the problem

The direct or indirect prohibition of passive sales imposed on a buyer/reseller, as well as cross-supplies between members of a selective distribution system, are characterized as restrictions contrary to Article 101, paragraph 1, of the Treaty on the Functioning of the European Union (TFEU), which cannot benefit from exemption under the Vertical Block Exemption Regulation (VBER). However, a supplier/manufacturer is free to commit to refraining from both active and passive sales within the territory reserved for a distributor.

TSCs resulting from the internal organization of a supplier cannot be called into question on the basis of Article 101, paragraph 1, of the Treaty on the Functioning of the European Union (TFEU). They are only sanctioned if an abuse of dominant position by this supplier, as defined in Article 102 of the TFEU, is established.

[1] https://meco.gouvernement.lu/dam-assets/publications/rapport-etude-analyse/minist-economie/etude-juridique/Etude-RTO.PDF
[2] https://www.benelux.int/fr/publication/les-restrictions-territoriales-de-loffre-dans-le-commerce-de-detail-en-belgique-pays-bas-et-luxembourg/
[3] https://odc.gouvernement.lu/dam-assets/publications/rapport-etude-analyse/rapports-observatoire-formation-prix/rapport-thematique-ofp/rt-ofp-009/20180619-rapport-rto-2018.pdf

3. Future evolution of the problem

NTR - Nothing To Report.

4. Recommendation

*The potential impact of the Recommendation on a scale from 1 (very low) to 5 (very high) is: **2**.*

Forbid TSCs imposed on companies and/or tighten the threshold for abuse of dominant position, as defined by Article 102 of the Treaty on the Functioning of the European Union (TFEU).