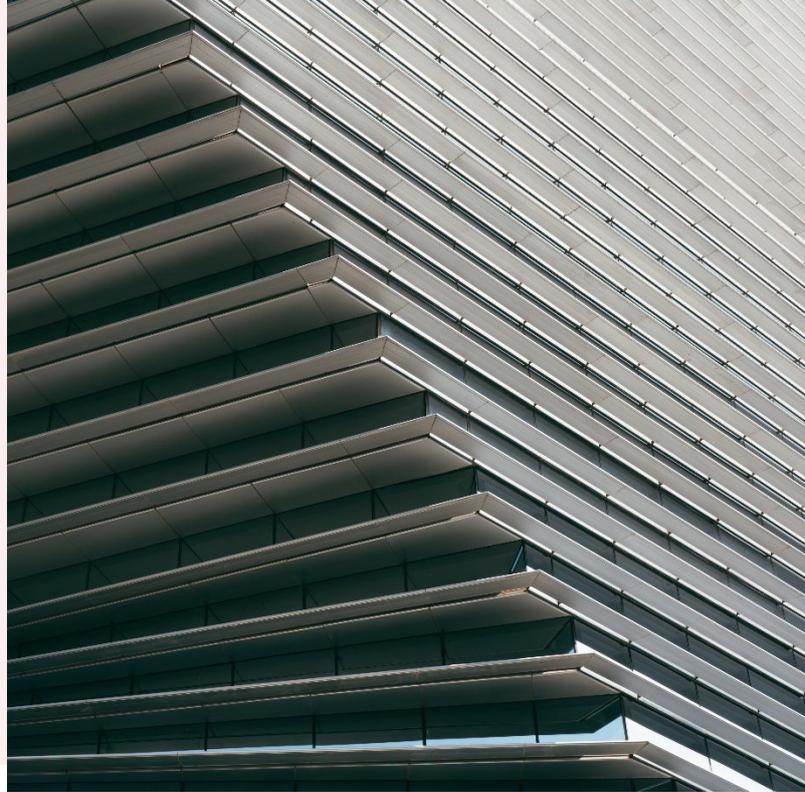


European Commission call for evidence to inform new measures to tackle "unjustified" territorial supply constraints in fast moving consumer goods

16 March 2026



On 5 March 2026, the European Commission (Commission) published a call for evidence to inform potential new measures to address "unjustified" territorial supply constraints (TSCs) arising from unilateral conduct by non-dominant suppliers in the fast-moving consumer goods (FMCG) sector that fall outside the current scope of EU competition law. The initiative reflects the Commission's long-standing concerns that TSCs contribute to market fragmentation, reduced consumer choice and higher prices, by making it more difficult or impossible for wholesalers and retailers to source products from one Member State and sell them in another.

Any intervention targeting unilateral practices of non-dominant companies would represent a significant shift in the Commission's enforcement and regulatory approach.

Key issues

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Policy context – how did we get here?

The grocery sector has long been a focus of antitrust scrutiny, given its importance to everyday consumer spending. That scrutiny has intensified in recent years against the backdrop of sustained food price inflation, driven largely by external shocks (including the COVID 19 pandemic, the war in Ukraine, and climate related supply disruptions). While the Commission acknowledges the role of these external factors, it has simultaneously expanded its scrutiny of the sector to assess whether business practices may also be contributing to higher prices.

In doing so, the Commission has taken an increasingly expansive approach by investigating a broad range of unilateral business practices and testing novel theories of harm. Enforcement activity over the past decade has focused primarily on brand manufacturers and food producers, with scrutiny extending to a wide range of unilateral business practices such as dual pricing, volume restrictions, tying, modifying product packaging, removing languages on packaging, providing rebates only if products were not exported, delisting, and refusals to supply. Despite this activity, the Commission considers that its existing enforcement toolbox is insufficient to protect the single market imperative and address certain practices that it sees as having contributed to a period of higher prices, even when the supplier is not dominant.

While the Commission has increasingly focused on manufacturers' unilateral practices, it is unclear that wider food supply chain challenges, including sustained price inflation, can be primarily attributed to supplier conduct. In this context, a key question is whether intervention targeting non dominant manufacturers would be proportionate given the role of external cost and supply shocks.

The Commission's concerns are reflected in the Commission's Single Market Strategy Paper (published in May 2025), which identifies TSCs in wholesale and retail as one of the "terrible ten" barriers undermining the single market. The Paper signals an intention to develop tools to address "unjustified" TSCs imposed by significant, but non dominant, manufacturers, with a view to closing the perceived enforcement gap. In practice, any new tools developed by the Commission will likely apply to all FMCG companies irrespective of their size, but the use of those tools is expected to focus on those suppliers with a significant share of the market.

While the Single Market Strategy Paper also raises concerns about single market harmonisation and calls for "bold and urgent" action in telecommunications, energy-related services, transport and financial services, the emphasis on the FMCG sector (and, in particular, groceries) is perhaps unsurprising given that the removal of cross-border barriers in sectors such as telecoms and energy is likely to require even more complex and politically sensitive coordination between Member States, given the fragmented regulatory framework.

Call for evidence – what options is the Commission considering?

The call for evidence confirms that the Commission is actively considering a range of legislative and non-legislative options to tackle "unjustified" TSCs, including:

- Self-regulatory measures, such as a voluntary code of conduct;
- Guidance for national authorities and market operators (the call for evidence does not specify the laws to which such guidance would relate);
- Legislation based on economic dependence, drawing on models already used in Member States such as France, Italy and Germany; and
- Targeted legislation identifying prohibited practices, together with criteria for when such practices may be justified.

Commission officials have indicated that a mixed package of measures may be required, supported by implementation and enforcement mechanisms. If the Commission were to move forward with binding regulatory measures, the absence of clear bright line thresholds (such as clear market share criteria) could create uncertainty as to when intervention may be triggered and when conduct might be considered to breach the rules. These concerns are likely to be less acute in the context of non-binding guidance or voluntary self-regulatory initiatives.

Some Commission officials have suggested that any measures introduced could apply across the FMCG sector, while in practice the attention would be focused on food and grocery products. There does not seem to be a reasonable basis for singling out the food and grocery sector, particularly given that the concerns the Commission has expressed about higher prices have been largely driven by external factors which are relevant across a broad range of consumer good sectors and would remain unaddressed through any of the proposed policy changes.

Which practices is the Commission focused on?

Fact finding to date and recent enforcement action suggests that the Commission's concerns are concentrated on three categories of conduct, all of which are likely to be subject to any new tools or measures adopted by the Commission:

Refusal to supply

The Commission is considering tools to address situations in which a non-dominant supplier refuses or ceases to supply a buyer, with the objective of making it more difficult for the buyer to purchase a product in one Member State and sell it in another. This includes concerns around delisting products at national level to prevent domestic sourcing.

Under existing EU competition law, refusals to supply have been pursued primarily where the supplier is dominant, with the Commission relying heavily on internal documents to establish both the existence of a refusal and its underlying rationale. It is therefore difficult to imagine a future tool being effective if it does not afford the Commission (or EU Member States)

similar evidentiary access, and it is likely that enhanced investigative powers extending to non-dominant suppliers are under consideration.

Product differentiation (including packaging and labelling)

The Commission is also focused on product differentiation, including changes to packaging, labelling, branding, ingredients, recipes, volumes or GTIN codes. The Commission has previously found infringements by dominant suppliers where changes to packaging, volume, or weight made cross border comparisons or exports more difficult, for example by removing certain languages from packaging.

Rather than imposing a blanket prohibition, the Commission is understood to be exploring tools aimed at improving transparency and comparability, for example by requiring clearer disclosure of underlying product similarities across Member States. However, the Commission will need to consider the administrative and compliance costs to European suppliers of any new tool that is brought forward. In addition, a key question is whether these objectives can be achieved through self-regulatory mechanisms, such as a code of conduct, rather than prescriptive legislation, particularly given the legitimate commercial and consumer driven reasons for product differentiation (e.g., innovation to reflect consumer preferences in local markets).

Wholesale price differentiation

The Commission considers wholesale price differentiation as the practice which is most likely to prevent price reductions through parallel trade. While the Commission is not expected to mandate a single EU wide price, recent enforcement provides some indication of where concerns may arise, notably where discounts or rebates are conditional on the product not being exported, or where exporters face higher prices than domestic buyers.

Any intervention will need to strike a careful balance, to avoid curtailing the freedom of non-dominant suppliers to price according to market conditions. EU competition law has traditionally refrained from interfering with the unilateral pricing decisions of non-dominant firms, and there are many legitimate reasons for national price differentiation. Any new measures should focus on cases where there is a direct causal link between pricing practices and an intention to restrict cross border trade, rather than treating price differentiation as inherently problematic.

Whichever policy options the Commission brings forward, there will be calls for the Commission to take a narrow approach to identifying TSCs which are "unjustified", for example by limiting any new rules to situations where the sole objective of a practice is to restrict cross border trade, rather than pre-emptively classifying certain unilateral practices as harmful as that risks unduly limiting suppliers' commercial freedom without cause.

Stakeholder engagement – what comes next?

The call for evidence is open until 2 April 2026. A separate public consultation is expected in Q2 2026, with the Commission aiming to adopt proposals by the end of 2026.

Retailers, wholesalers, brand manufacturers, and consumer groups are expected to continue engaging actively with the Commission throughout the process. It is important that the Commission hears a range of views,

and that the Commission reflects in particular on the extent to which the different policy options will impose significant compliance costs and operational burden on European brand manufacturers and suppliers, and the broader implications for commercial freedom and innovation.

Overall, a number of key questions remain open, including the scope and form of any new regime, the role of market-share thresholds, and the balance between intervention and commercial freedom for non-dominant suppliers. As the Commission works with speed towards a potential end 2026 timetable to adopt its proposals, greater clarity will be needed soon so that stakeholders can assess compliance and operational impacts and engage effectively with the Commission on its proposals.



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