

European Commission
DG Competition
Dept. Director General, Cecilio Madero Villarejo,
Wetstraat 200
1040 Brussel

Dear Mr Madero Villarejo,

DATE & REFERENCE

Brussels, 4 July 2019
19-SG-M(NO-008)EN

FILE HANDLED BY

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SUBJECT

Evaluation "EU competition rules
on vertical agreements"

ANNEX

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COPY TO

- Maria Jaspers, DG Comp
- Damir Hajduk, DG Markt;
- COMP-VBER-
REVIEW@ec.europa.eu

Against the background of the ongoing review of the Vertical Block Exemption Regulation (VBER)¹, I herewith send you common views of the Benelux countries on the issue of territorial supply constraints. The Benelux countries feel that the review of the VBER is an opportunity to address the issue of territorial supply constraints. The considerations below result from the work of representatives of the respective national ministries of economic affairs in the Benelux working group on territorial supply constraints.

In 2015, the ministers of economic affairs of Belgium, the Netherlands and Luxembourg agreed to intensify their cooperation regarding territorial supply constraints in the retail sector². In 2017 the General Secretariat of the Benelux, in close coordination with the three ministries of economic affairs, conducted a survey³. It showed that retail companies of all sizes in the Benelux are effectively hindered from sourcing from the country of their choice at the best possible market conditions, which has, among others, negative consequences for consumer prices and the range of products on offer. The Benelux working group considers that such generalised partitioning of the internal market distorts cross border competition. On several occasions, the SG Benelux or its member States have raised their concerns at EU level.

Noteworthy, data from Luxemburg suggests that non-retail businesses⁴ face similar difficulties. Moreover, the Belgian Ministry of Economy found that prices and purchasing conditions offered by multinational suppliers to Belgian retail firms are less favorable than those for neighboring countries leading to higher prices in Belgium⁵. This was confirmed in 2017 through the comparison of the level of consumer prices⁶ for identical products in Belgium, Germany, France and the Netherlands. Part of these price differences could be the result of territorial supply constraints.

The issue of territorial supply constraints is not limited to the Benelux, but a European-wide issue. The Benelux is of the opinion that in order to contribute to a European

¹ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-5068981_en

² Benelux recommendation on territorial supply constraints in the Benelux (M(2015)4)

³ "Territorial Supply constraints in the retail trade in Belgium, the Netherlands and Luxembourg – Consequences for the Benelux internal market", General Secretariat of the Benelux Union, February 2018. Source: <http://www.benelux.int/files/9215/2696/9988/616-TSC-EN-draft3.pdf>

⁴ Data on companies outside the retail trade were collected only in Luxemburg.

⁵ Source: <https://gouvernement.lu/dam-assets/documents/actualites/2018/06-juin/rapport-rto-2018.pdf>

⁶ « Analyse des prix : 2017 ICN Rapport annuel, 13 mars 2018, <https://economie.fgov.be/sites/default/files/Files/Publications/files/Rapport-annuel-2017-observatoire-des-prix-partie3-comparaison-internationale-niveau-des-prix-a-la-consommation.pdf>.

solution, it is important to gather further data and to analyse the effects of possible follow-up measures. Territorial supply constraints should be and should remain part of the agenda of the (upcoming) European Commission. The European Commission has taken a first step by taking up the issue in its communication “A European Retail sector fit for the 21st Century” (2018).

The Benelux countries also welcome the study on territorial supply constraints in the EU retail sector ordered by the European Commission⁷, which is set to shed light on the phenomenon on an European level. This study would be a good opportunity to evaluate the short and long-term effects of territorial supply constraints on competition, innovation and consumer welfare and seek clarification on whether territorial supply constraints are justified for certain types of goods. The results of this study should feed into the review of the VBER.

Depending on the results of the external investigation, possible solutions to territorial supply constraints may lay in different fields. They may not only lay in the sphere of competition law, but could also be related to other internal market issues like the principle of “non-discrimination of service recipients”⁸, the geoblocking or unfair trade practices (B2B).

When looking specifically at competition law, the Benelux working group found that current competition law including the VBER is not effective against territorial supply constraints in certain specific circumstances. The Benelux countries ask the European Commission to take territorial supply constraints into account and to look specifically at the effectiveness of the existing legal framework in preventing discrimination on the ground of nationality or residence, inter alia when reviewing the VBER. It is fundamental to be coherent with the policy objectives of an integrated internal market.

We thank you for taking these elements into consideration and look forward to your response. Should you have any further questions about the work on territorial supply constraints and its implications at the Benelux level, please do not hesitate to contact Mr Wim Martens (w.martens@benelux.int).

Yours sincerely,



Alain de Muyser
Deputy Secretary General

The Benelux is an intergovernmental cooperation between Belgium, the Netherlands and Luxembourg that wants to serve as a laboratory for European Integration. The renewed Benelux Treaty signed in 2008 focusses the cooperation on internal market, sustainable development and security & justice.

⁷ Call for tender for a study on territorial supply constraints in the EU retail sector, published on 01/03/2019, deadline: 26/04/2019. Source: https://ec.europa.eu/growth/content/study-territorial-supply-constraints-eu-retail-sector_en.

⁸ Set out in the article 20.2 of the Services Directive 2006/12/EC.