

**Mr Hubert Gambs**  
**Deputy Director General**  
**DG GROW**

**29 January 2021**

**Subject: Follow-up to stakeholder workshop 11th December on VVA study on Territorial Supply Constraints**

Dear Mr Gambs,

Thank you for inviting AIM, the European Brands Association, to participate in the stakeholder workshop on Territorial Supply Constraints (TSCs) on 11<sup>th</sup> December 2020, and also welcoming our Belgian Association, BABM, the Belgilux Association of Branded Goods Manufacturers, as a speaker on the panel.

Following the workshop, I wanted to set out some points that I had made at the workshop on the study, and also this issue overall, as I feel it's important that this discussion is based on facts going forward, as well as clarity in exactly what we are discussing. We do not agree with the other participants' views that the study confirms fragmentation of the Single Market, or indeed provides any fact-based evidence of the existence of TSCs.

**The VVA study does not prove the widespread use of TSCs:**

1. The researchers expressly acknowledge in their report that they are not able to definitively confirm the existence of TSCs. The overall conclusion (page 107) highlights this in detail:

*"As an overall conclusion, **it is difficult to make an assessment** of the use of Territorial Supply Constraints strictly speaking (such as refusals to supply and quantitative restrictions) **as no hard data or documentary evidence of TSCs is available besides statements and reporting from both the retailers and wholesalers on the one hand and manufacturers on the other**".*

This lack of evidence is supported by the fact that of the 17 of the National Competition Authorities surveyed for the study, *"most...have not received any official complaints either"*.

2. Indeed, the report goes no further than concluding that "indirect evidence" is 'suggestive' of the presence of restrictions in the supply chain.

*"However, **indirect evidence**, mainly the econometric analysis, the survey interviews results, and existing literature, **seems to suggest** the presence of restrictions in the supply chain, which fragment the Single Market."*

Moreover, the researchers themselves question in the report the robustness of the econometric analysis and the review of existing literature was far from exhaustive.

3. In respect of the econometric analysis, any inference that TSCs must exist because other ‘external’ factors (such as tax, labour, logistics etc) do not fully explain the national price differentials observed is not factually correct, and indeed is flawed and misleading. This takes no account of the fact that **the manufacturer’s price is only one component of the retailer’s final decision on what shelf-price to set for each product**, which will incorporate other factors such as the **retailer’s own business model** (e.g. discounter vs premium), private label strategy, margin objectives per category / country, and the **local market conditions of competition**. In addition, product assortment and manufacturer prices are influenced by the **extensive negotiations that take place between suppliers and retailers** (whether individually and/or via retailer alliances).
4. The pricing data points (retail and wholesale) used in the study were so limited in number and scope that generalized conclusions cannot be drawn from them. Since **we have not seen – or been given an opportunity to comment on - any of the manufacturer pricing data that VVA obtained from retailers**, it is not clear whether fundamental issues such as any differences driven by the retailer’s requirements and demands, including exclusivity of products in their market, for example, or other legitimate factors beyond the manufacturers control, have been taken into account in the analysis.
5. Moreover, the study acknowledges wide price variations for the retailer brands. *“The collected information shows that for private label products available from large multinational retailers there are also large pricing differences between Member States, which seems to suggest that **retailers engage in some of the related practices that they accuse manufacturers of engaging in.**”* In addition, the report observes that *“price discrimination by retailers on private label products, as also suggested in previous research, puts pressure on pricing policies of branded products of manufacturers”*.
6. Whilst the existence of price variations across Europe is a recurring theme in the study, the bibliography reveals that **many recent national authorities and central banks reports were not consulted**. If they had been, they would have shed light on many factors in this regard. Such reports rely on the analysis of hundreds of thousands of products, not just 53 products in 11 countries.
7. These studies will also show that price variations are not just a commercial reality, but actually a healthy part of being a competitive economy. They allow a broader distribution of products in the EU by also covering low price markets. We understand that DG COMP shares this view.
8. AIM is fully cognisant of the fact that the European Commission endeavours to conduct all policy discussions on facts, and we are in full alignment with you that future discussions on this issue are based on evidence and fact, not merely “suggestions”.

#### Scale of the alleged issue:

9. The Commission has stated in its press release on this study *“Half of EU fast moving consumer goods sellers experiences supply constraints based on their location”*. **This is not true and is misleading**. The study states that half of those **surveyed** have stated this i.e. 34 – this is not half of the 5.5 million retailers and wholesalers in the EU. The press release headline incorrectly portrays there is a problem, and yet the study has found no evidence of this.
10. The **retailers and wholesalers have made statements**, as the researchers explained, **but did not provide any data or evidence to substantiate these statements**. Given that major economies, such as Germany, Spain and Italy, are not even included in the survey, we find this statement far from

representative of the European situation and respectfully request that this is corrected on the Commission website and media channels.

11. This figure of 34 retailers is indeed questioned by the researchers themselves, both at the workshop, and in the study, where they point to the potential inherent bias in the survey results, due to the types of retailers who participated:

*“It should be noted that it can be assumed that the share of retailers actually affected by TSCs as reported above (49%) [34] could be lower due to selection bias of the sample: companies affected by TSCs have a higher likelihood to participate to the online survey compared to the ones that are not affected as they probably have a lower interest in the topic”.*

12. The researchers also clarify that indeed this report reflects primarily the views of a few large, international retailers:

*“Most of the interviewed retailers are large operators with a strong position in the national market and often with operations in other Member States as well”.*

13. We understand, therefore, that this report represents the views of a **very limited number of international retailers** complaining about the fact that they cannot procure a **limited number of SKUs** in a **limited number of product categories** at more advantageous conditions.

14. Moreover, the purported figure of **14 billion euros of savings for the consumer** is based on a **hypothetical European Union** because it is based on the assumption that **all economies in Europe are the same**. The researchers themselves in the report defined that *“The (price) data provided by Euromonitor does not lend itself for an econometric analysis, as it does not include a sufficiently large sample of perfectly identical brands across countries”*. They also state that this *“econometrically derived estimate is **subject to some uncertainty**”*. *“If retailers in all the countries with higher purchase prices than the country with the lowest purchase price could source their supplies from that country, there could be a saving”*. This is based on the assumption that all economies in Europe are the same - this is simply not the case. Costs are different, prices are different, purchasing power is different, to name but a few. This is misleading. The report itself states *“the 90% confidence interval of this estimate ranges from 0.5 to 28 billion”*. It even states that *“**there is no certainty whether the possible benefit of a lower consumer price would indeed materialise**”*.

15. This figure has already been taken out of its factual context and used incorrectly in the public domain. It is disingenuous to mislead consumers, and indeed anyone, including other policymakers, in this way and we request the Commission corrects this on each and every occasion, so that the facts prevail.

16. It is also not correct that retailers do not purchase in lower price markets. **Parallel trade is a reality**, as the 2019 report of the Luxembourg “Conseil de la Concurrence<sup>1</sup>” points out in its conclusion:

*“Par ailleurs, il résulte des résultats de l’Etude Benelux que 33% des entreprises participantes (incluant donc les réponses des autres pays) indiquent avoir recours aux importations parallèles pour profiter de prix d’achat plus favorables et/ou élargir leur gamme” (p. 42)*

<sup>1</sup> Rapport d’enquête dans le secteur de la grande distribution au Grand Duché du Luxembourg, 18 Janvier 2019

**Product Differentiation complies with Single Market Rules – the concept of “TSC-related practices” is flawed:**

17. The researchers have taken legitimate business strategies, such as differentiation of products and marketing, as well as regulatory requirements, such as labelling, and allocated these as “TSCs-related practices”. This is incorrect and would change the fundamentals of every business in Europe.
18. **Regulatory requirements are mandatory.** Manufacturers do not decide that laws in different Member States are different. We must, and do, adhere to them. Differences in packaging, labelling, recycling requirements exist across markets – it has been highlighted in Commission reports (High Level Forum on Food). These are not ‘*practices*’ that manufacturers are allegedly imposing to fragment the Single Market. It is simply a fact and, as I proposed at the workshop, an analysis of these different laws would be very helpful to try to find a solution.

**Going forward:**

19. In terms of these discussions going forward, can you please clarify what will be discussed **outside of** the revision of the current competition rules, and competition law enforcement, which already provide for a sufficient regulatory framework to assess any illegitimate territorial supply restrictions imposed by any operator.
20. We need clarity on when we are addressing competition rules, and when we are addressing other issues such as competitive markets and how they operate in the Single Market. Differentiation – which is critical to the very existence of competitive markets - is not a Territorial Supply Constraint, and should not be qualified as such. The concept of TSC-related practices is flawed and in contradiction to the legal - commercial reality in the Single Market. Given the lack of robust evidence for widespread use of TSCs, as concluded by the study, **we do not see any grounds for the conclusions drawn by other workshop participants that this issue requires another legislative framework**, if evidence-based policymaking principles are applied. That said, as I committed at the workshop, AIM is ready, as always, to engage in dialogue.
21. As we had previously made a submission on the VVA study in May 2020, where we have raised points consistently about a facts-based approach, for full transparency, I attach them again for publication on the Commission’s website.

**Conclusion:**

The Single Market is critical for Europe, and it is fundamental to the success of our businesses in Europe. It is rightly protected by the Treaty, which aims to abolish barriers between Member States. The reality is that this Single Market is a ‘*mosaic*’ of markets – local, regional or national – all distinctive and determined by different parameters – local market regulations, local taxation, local salary indexes, local pricing, local competitors, local brands, and most importantly, consumers, who have different tastes, customs, habits and also purchasing power ability. Less than 10 percent of products are identical across any 2 markets, which celebrates the wealth of choice for consumers. This is rich in its diversity and should be treasured for that difference and diversity. The French Competition authority again recently identified the danger of a retail “one-size-fits-all” approach at the expense of choice and competition<sup>2</sup>.

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<sup>2</sup> Case 19/0024F Auchan, Casino, Metro France et Schiever joint purchasing agreement. Décision n° 20-D-22 du 17 Décembre 2020- Carrefour Tesco.

The retail landscape is evolving at an accelerating pace, and it is critical to us that we have a healthy and competitive retail environment. If Covid19 has taught us anything, it is the importance of responding to all markets, whether local, regional or national, to deliver for consumers, and ensure resilience in our businesses so that supply meets demand. The Consumer Goods industry has reorganised its production lines and extended its working hours around the clock not only to respect sanitary measures, but most importantly to ensure no shortfall of production despite restrictions on product lines and capacity. We demonstrated unparalleled agility to switch production, thanks to innovative engineers and experts, to sanitary equipment when it was most needed at the start of the crisis. In the meantime, much adjustment is underway as **all** other routes to market – bars, hotels, restaurants, cafes, canteens, hairdressers, beauticians etc – remain shut in most countries in Europe, making us solely reliant on one channel, retail and wholesale.

I committed at the workshop to engage in all future discussions, which AIM most certainly will, and in order to bring the appropriate expertise to the table, I would request clarity on what precisely will be discussed going forward, so everyone is clear on the complexity of these issues and a proper, fact-based approach is taken, within the parameters of Better Regulation principles.

Yours sincerely,



Michelle Gibbons

Director General

AIM European Brands Association