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AIM BACKGROUND BRIEFING

Consumer goods price differences across the EU are not due to "territorial supply constraints"

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The Competitiveness Council will discuss the issue of "territorial supply constraints" as an AOB point on Friday 24 May 2024. The accompanying note states a number of points, including that producers and wholesalers restrict supply and thereby fragment the Single Market.

On behalf of producers, please note the following for clarification purposes:

1. Competition law already regulates and sanctions unlawful territorial restrictions. Unfair practices in B2B commercial relations are regulated by the Unfair Trading Practices Directive, which is due for revision in 2025.
2. Allegations of so-called "territorial supply constraints" have been assessed by the European Commission, in 2009, and recently in 2019/2020.
3. Retailers are responsible for setting consumer prices for all consumer goods, both for their own private label goods and branded consumer goods. They differentiate consumer prices, both within countries and across national borders.
4. Fragmented market conditions across the EU inevitably lead to price variations. These should be addressed to improve the functioning of the Single Market. Digital labelling should be considered within this framework.

Facts & figures about the fast-moving-consumer goods industry:

- The consumer goods industry represented 26.2% of the EU's GDP in latest available figures, worth €4.1 trillion[1].
- Household consumption represents 51% of the EU's GDP, of which FMCG brands consumed at home represent 8.1%[1].
- It is the EU's third largest manufacturing sector, representing 11.6% of all manufactured goods produced in the EU[2].
- Of the €450.9[3] billion of FMCG products traded within and outside the EU,
    - €276.1 billion (61%) were traded within the EU borders (6.5% of total intra-EU27 trade)
    - €174.8 billion (39%) were exported outside the EU.

1. <u>Competition law already regulates and sanctions unlawful territorial restrictions.</u>

1.1 The EU's comprehensive body of competition law already regulates territorial restrictions and the European Commission's Directorate General for Competition has investigated many parallel trade cases in many sectors, including pharmaceuticals, automotive, technology and FMCG.

[1] Source: Eurostat 2021
[2] Source: Eurostat, Prodcom 2022
[3] Source: Euromonitor based on Eurostat using HS codes. Trade by commodity. Nace Rev.2 activity.

1.2 Given DG COMP's effectiveness in preventing and sanctioning unlawful territorial restrictions based on 60 years of EU competition case law on parallel trade restrictions, devoting additional EU resources to further regulating this issue would require an assessment of how this would affect – and be compatible with – the current body of EU competition law, and how it could realistically be applied across all industry sectors.

1.3 Unfair practices in B2B commercial relations are regulated by the Unfair Trading Practices Directive, which is due for revision in 2025. Addressing issues for food and non-food products that constitute trade barriers outside of competition law should be addressed within this framework.

2. <u>Allegations of so-called "territorial supply constraints" have been assessed.</u>

2.1 Already in 2009, the European Commission undertook to examine *"business practices, such as constraints on territorial supply or hindrances to parallel trade"*, which led five of its departments (COMP, ECFIN, ENTR, MARKT, ESTAT) to carry out a joint assessment based on a review of objective data. The trade data analysed did not reveal any problem; no study was published.

2.2 In 2019, the European Commission commissioned a further study, which found "*no hard data or documentary evidence*" of TSCs after surveying both 17 national competition authorities, "*most of (which had) not received any official complaints either",* and retailers and wholesalers who said they had experienced constraints, although no data, evidence or reports of relevant facts were provided to support the statements of these 34 "*large operators*" (0.0006% of the 5.5 million retailers and wholesalers in the EU).

2.3 The estimate of €14 billion in consumer savings produced by this study has been completely taken out of context and misrepresented in the public domain without the qualifiers used by the study's authors. In fact, this estimate is based on a combination of unrealistic assumptions, including that all economies and market conditions are the same across the EU. The authors stated that "*the (price) data from Euromonitor does not lend itself to an econometric analysis"* and therefore *"the econometrically derived estimate is subject to some uncertainty"*. They then went on to qualify "*that the 90% confidence interval of this estimate ranges between €0.5 billion and €28 billion"*, before concluding that *"there is no certainty whether the possible benefit of a lower consumer price would indeed materialize".*

3. <u>Retailers differentiate consumer prices both within countries and across national borders.</u>

3.1 Retailers set consumer prices, not producers/ manufacturers (manufacturers are not permitted to do this under the Vertical Block Exemption Regulation - 2022/720). Large retailers typically use pricing, assortment, and differentiation strategies to adapt to their competitive environment (such as the number, positioning, formats, and relative strength of players), which explains the significant regional and local price variations observed on retailers' shelves in local markets across the EU, in particular for private label products which represent 40-60% of grocery sales in certain countries, whether between countries, regions, cities or even within cities under the same retailer's banner. This is the same for all consumer products, whether that be grocery products or cars, as documented by research of several central banks.

3.2 In its February 2023 Working Paper on *cross-country price and inflation dispersion*, the European Central Bank (ECB) examined consumer price differences "*in the otherwise homogenous and highly integrated border region of Austria and Germany*" and concluded that:

- "***Retailers differentiate prices always and everywhere, also within countries, but they do so most extensively across national borders. Their market power allows them to price discriminate between countries and maximize profits separately on each side***".
- *"Even borders without relevant trade frictions can entail large price differences[, which] are rooted deeply in* ***deliberate price differentiation of retailers****."*

- "***Retailers have considerable market power vis-à-vis consumers***, *with the border effect pointing to retailers choosing to apply price differentiation – for historical reasons – based on existing distribution networks.*"

4. **Fragmented conditions across the EU inevitably lead to price variations and should be addressed to improve the functioning of the Single Market.**

4.1 Leaving aside the impact of the specifics of how the local retail supply chain operates, how it is driven by local demand and requirements, and how commercial and promotional agreements are made locally to serve consumers in the EU, at least three key factors do contribute to price variations across the EU:

- ***Different market conditions prevail from one region to another***: The EU Single Market is far from homogeneous in terms of market environments, as markets are local and vary between countries due to historical, cultural, and socio-economic differences. To compete effectively, both manufacturers and retailers need to adapt their offers and prices to the different conditions prevailing in each geographic market, in particular: logistics costs, labour costs, transport costs, local raw material costs, consumer trends and demand, and specific supply chain constraints.

- **European consumers are diverse**: At their core, brands are consumer-centric, tailoring their offerings to local consumer choices, preferences, tastes, expectations, cultures, traditions, and habits, sometimes seasonally. The popularity of a brand in any given market in turn influences consumer choice, loyalty, and preferences, as well as the relative strength of the brand. The EU's motto is "united in diversity", not "united through uniformity", which would mean less choice, more generic private labels, fewer "typical" products, and less innovative products.

- **Legislation and compliance costs vary widely from one country to another**: The EU's Single Market remains highly fragmented by differences in national legislation, such as tax and VAT systems, labelling, packaging, recycling, composition, ESG standards, conditions of sale, energy prices, e-commerce. In particular, the growing number of sector-specific national regulations on environmental standards, labelling, packaging or composition vary widely from one country to another. Such differences result in different national compliance costs for manufacturers and are reflected in the commercial negotiations between business partners across all sectors. These are among a number of issues that need to be addressed from a Single Market perspective, many of which are outlined in this recent compilation of over 100 case studies. Digital labelling should be considered within the context of different labelling rules, although the flexibility of a digital label should not prevent the EU from seeking further harmonisation of the myriad of labelling rules within the Single Market.

About AIM

AIM (Association des Industries de Marque) is the European Brands Association, which represents manufacturers of branded consumer goods in Europe on key issues that affect their ability to design, distribute and market their brands.

AIM comprises 2500 businesses ranging from SMEs to multinationals, directly or indirectly through its corporate and national association members. Our members are united in their purpose to build strong, evocative brands, placing the consumer at the heart of everything they do.

AIM's mission is to create for brands an environment of fair and vigorous competition, fostering innovation and guaranteeing maximum value to consumers now and for generations to come. Building sustainable and trusted brands drives the investment, creativity and innovation needed to meet and exceed consumer expectations.

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