Most-Favored Nation Clauses

When a company signs a most-favored nation clause, it promises that it will give a trading partner the best possible price. It either does not offer a lower price to a competitor, or must compensate the original partner if it does. These clauses can harm competition due to their impact on equilibrium prices and entry.

MFNs are a type of Contract that References Rivals because a buyer's price depends on the prices paid by its head to head rivals. This means an MFN is formally a vertical contract but it has horizontal effects, making it more dangerous to competition. A buyer with MFN protection, for example, mandates that the seller (e.g. a hotel or ebook publisher) charge the same price to its rivals (other buyers) as to it. This type of provision reduces price competition, can exclude entrants with different business models, and can entrench the power of certain platforms. As a result, MFN clauses have become an important area of antitrust enforcement. This module will focus on the use of these clauses in the digital economy.

Reading

Required Reading

U.S. v. Apple, 791 F. 3d. 290 (2015)

Jonathan B. Baker & Judith A. Chevalier, *The Competitive Consequences of Most-Favored-Nation Provisions*, 27 Antitrust 20.

Steven C. Salop & Fiona Scott Morton, *Developing an administrable MFN enforcement policy.* 27 Antitrust 15 (2013).