

## Most-Favored-Nation Clause and Competitive Law

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### Abstract

The U.S. antitrust agencies have turned the spotlight on the most-favored-nation clause (MFN). Under an MFN, one party to a transaction promises to give the other party at least as favorable contractual terms as it gives to any other counterparty. Since 2010, the Department of Justice in the U.S. has litigated two high-profile cases that challenge the use of MFNs in the health insurance and e-book industries. On July 10, 2013, the District Court for the Southern District of New York found that Apple had committed a *per se* Sherman Act violation by conspiring with the publishers to eliminate retail price competition and raise e-book prices. Our survey of the economics literature shows that MFN provisions can either promote competition or harm it. Indeed, they may do both in any particular industry setting. This paper suggests that we should use rule-of-reason scrutiny to review MFNs. We also search for Taiwan Fair Trade Commission decisions to find out whether MFNs existed in these transactions and analyze how the Commission treated them.

Keywords: Most-Favored-Nation Clause, E-book, Rule of Reason, *per se* Illegal, Apple Computer.