



Department of Justice

FOR IMMEDIATE RELEASE
FRIDAY, AUGUST 17, 2012
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DEPARTMENT OF JUSTICE, FEDERAL TRADE COMMISSION TO HOLD WORKSHOP ON “MOST-FAVORED-NATION” CLAUSES

Provisions Can Present Competitive Concerns Under Certain Circumstances

WASHINGTON – The Department of Justice and the Federal Trade Commission (FTC) announced today that they will hold [a joint public workshop on most-favored-nation clauses \(MFNs\)](#) on Sept. 10, 2012, to explore the use of MFN clauses and the implications for antitrust enforcement and policy.

The most commonly used MFN provisions guarantee a customer that it will receive prices that are at least as favorable as those provided to other buyers of the same seller, for the same products or services. Although at times employed for benign purposes, MFNs can under certain circumstances present competitive concerns. This is because they may, especially when used by a dominant buyer of intermediate goods, raise other buyers’ costs or foreclose would-be competitors from accessing the market. Additionally, MFNs can facilitate collusion and stabilize coordinated pricing among sellers.

The workshop will offer an opportunity for businesses, academics, economists, lawyers and other interested parties to consider the use of MFNs and the legal and economic analyses of these provisions. The workshop will consist of a series of panels examining, among other topics, the legal treatment of MFNs, economic theories concerning MFNs and why they are used, and industry experiences with MFNs. Panelists for the workshop will include private attorneys, economists and industry representatives.

The Department of Justice and the FTC are interested in receiving comments on MFNs, and will accept written submissions from the public before the workshop and until Oct. 10, 2012, 30 days after the event. Interested parties may submit public comments to ATR.LPS-MFNPublicWorkshop@usdoj.gov. Submitted comments will be made publicly available on the Department of Justice and FTC websites.

The all-day workshop is free and open to the public. Individuals are encouraged, but not required, to register in advance for the workshop by sending an email to ATR.LPS-MFNWorkshopRSVP@usdoj.gov. Please include “RSVP” in the subject line. Seating will be on a first-come, first-serve basis.

The workshop will take place at the FTC's satellite conference center at 601 New Jersey Ave., NW, Washington, DC from 9:00 a.m. to 5:30 p.m. ET on Sept. 10, 2012. It will include the following panels and presentations:

Economic Theories of MFNs: Harms and Efficiencies

Presenters

Jonathan Baker, Professor of Law, American University Washington College of Law
Judith A. Chevalier, William S. Beinecke Professor of Finance and Economics, Yale School of Management

Moderators

Robert Majure, Economics Director of Enforcement, Antitrust Division, U.S. Department of Justice
Daniel O'Brien, Senior Economic Policy Advisor, Federal Trade Commission

Empirical Evidence on Effects of MFNs

Presenter

Ramsey Shehadah, Senior Vice President, NERA Consulting

Panel

Jonathan Baker, Professor of Law, American University Washington College of Law
Judith A. Chevalier, William S. Beinecke Professor of Finance and Economics, Yale School of Management
Ramsey Shehadah, Senior Vice President, NERA Economic Consulting

Moderators

Robert Majure, Economics Director of Enforcement, Antitrust Division, U.S. Department of Justice
Daniel O'Brien, Senior Economic Policy Advisor, Federal Trade Commission

Legal Treatment of MFNs

Panel

Doug Anderson, Of Counsel, Bailey Cavalieri LLC
Andrew I. Gavil, Incoming Director, Office of Policy Planning, Federal Trade Commission
Elai Katz, Partner, Cahill, Gordon & Reindel LLP
Janet L. McDavid, Partner, Hogan Lovells

Moderator

Peter J. Levitas, Deputy Director, Bureau of Competition, Federal Trade Commission

Lunchtime Speech: Nelson Jung, Director, Markets and Projects, U.K. Office of Fair Trading

MFNs: From Theory to the Real World

Panel

W. Thomas McGough Jr., Senior Vice President & Chief Legal Officer, University of Pittsburgh Medical Center

Murray N. Ross, Ph.D., Vice President & Director, Institute of Health Policy, Kaiser Permanente

Melissa A. Scanlan, Director, Legal Affairs, T-Mobile USA, Inc

John Thorne, Partner, Kellogg, Huber, Hansen, Todd, Evans & Figel PLLC

Mark D. Whitener, Senior Counsel, General Electric Co.

Moderator

Martha S. Samuelson, President & CEO, Analysis Group Inc.

Moving Forward – How Has Thinking about MFNs Evolved and Where Might It Go?

Panel

David I. Gelfand, Partner, Cleary, Gottlieb, Steen & Hamilton LLP

Jonathan M. Jacobson, Partner, Wilson, Sonsini, Goodrich & Rosati

Joseph Kattan, Partner, Gibson, Dunn & Crutcher LLP

Steven C. Salop, Professor of Law, Georgetown University Law Center

Moderator

Renata Hesse, Deputy Assistant Attorney General for Civil Enforcement, Antitrust Division, U.S. Department of Justice

Directions to the FTC's Conference Center are available at <http://www.ftc.gov/bcp/workshops/transportationguide.shtml>.

Reasonable accommodations for people with disabilities are available upon request. Requests should be submitted via email to skonstandt@ftc.gov or by calling Samantha Konstandt at 202-326-3348. Requests should be made in advance. Please include a detailed description of the accommodation needed, and provide contact information.

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