Most-Favoured-Nation (MFN) Clause in Belgium

Legislation:

- On 30 July 2018, the Belgian legislator introduced an act on the freedom of tariffs for operators of tourist accommodation in contracts with operators of online booking platforms such as Booking.com or Hotels.com. This act prohibits all types of parity or MFN clauses, both wide and narrow, imposed on tourist accommodation operators. The act prohibits online platforms operators to impose conditions or requirements on operators of tourist accommodation. The latter must be free to determine the price of the rental of their tourist accommodation, and to grant any discount or tariff advantage of any kind. The law therefore enshrines the principle of tariff freedom for all tourist accommodation located in Belgium, regardless of the law applicable to the contract concluded between the operator and the platform operator.

- The Act of 30 July 2018 only applies to operators of tourist accommodation. In other sectors not covered by this specific act, the Belgian Competition Authority (BCA) and the Belgian Courts rely on Article 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) and its Belgian equivalents, Article IV.1 and IV.2 of the Code of Economic Law to deal with MFN matters.

- Article 5(d) VBER, directly applicable in Belgium: exclusion of retail "across-platform" parity obligations imposed by online intermediation service providers with respect to sales to end users (wide MFNs): only narrow MFNs exempted, wide MFNs must be individually assessed under article 101(3) TFEU.

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Most-Favoured-Nation (MFN) Clause in Belgium

Case law

In Belgium, the case law up to date regarding MFN clauses concerned MFN clauses used by a dominant platform in the real estate market (Immoweb).

- **The Immoweb case**: On 30 January 2015, the BCA opened an ex officio investigation against Immoweb, the company behind the website www.immoweb.be, Belgium's leading real estate website, concerning MFN clauses imposed by Immoweb on developers of software for real estate agencies. The developers develop software for real estate agencies that allow these agencies to automatically and immediately transfer the real estate they have in portfolio onto real estate websites. Immoweb pays these developers a fee per real estate classified that is transferred to its website through their software. As a result of the MFN clauses in the contracts between Immoweb and the software developers, the latter had to, in case they signed a contract with a competitor of Immoweb, offer the same conditions to Immoweb, if these conditions were financially more advantageous. In its preliminary investigation, the BCA found that in practice, the MFN clause prevented Immoweb's competitors from negotiating with software developers a remuneration lower than the remuneration offered by Immoweb for the real estate listings transferred to their site. In fact, in this case the software developers would miss out on certain revenues, since the vast majority of real estate agencies want to see their properties advertised mainly, or at least equally, on Immoweb. Immoweb committed itself to unilaterally put an end to these MFN clauses and not to incorporate such clauses in future contracts with software developers, and the BCA therefore closed its investigation.

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