

Most-Favoured-Nation (MFN) Clause in Hungary

LEGISLATION: There is **no legislation** in Hungary covering the application of MFN clauses.

CASE LAW:

Netpincér case: Case No 89/2015 of the Hungarian Competition Authority (Gazdasági Versenyhivatal, „GVH”):

GVH launched an investigation against the operator of the biggest food delivery platform (Netpincér), as it had presumably been applying competition restrictive clauses in its contracts concluded with restaurants. The undertaking had prescribed that the restaurants were obliged to offer their services under the same conditions (e.g. prices, reductions, delivery conditions) on Netpincér as applied on their own distribution channels (websites, pre-booking/pre-ordering via phone, leaflets). Although the contractual term did not expand to orders delivered through other food delivery platforms (i.e. the competitors of Netpincér), the GVH identified that unique conditions, especially unique prices, were applied on all the distribution channels. Namely, the restaurants were not interested in offering their services at lower prices through other online food delivery platforms compared to the prices offered on their own distribution channels, as they were afraid that this would result in consumers preferring to make food orders through food delivery platforms instead of through their own distribution channels. Orders made through food delivery platforms, as opposed to orders placed directly through the restaurants' sales channels, place a greater financial burden on the restaurants, as the restaurants are required to pay commissions for the food delivery platforms.

In the course of the procedure, in order to remedy competition concerns, Netpincér undertook to modify its contracts signed with the restaurants. Consequently, Netpincér no longer places an obligation on the restaurants to apply unique conditions to non-online channels of placing orders (e.g. pre-ordering via phone) or to unique promotions. GVH accepted the commitments, as, according to the assessment of the GVH, the accepted commitments are suitable for resolving the established competition concerns, since they enable restaurants, under certain conditions, to offer lower prices on their own online platforms compared to the prices available on Netpincér. Consequently, the restaurants are discouraged from continuing to offer more favourable conditions on other intermediary platforms.

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OTHER – SECTORAL INQUIRY:

The Competition Act provides that where the movement of prices or other circumstances suggest that competition may be restricted or distorted within the market of any particular sector of the economy, GVH shall have powers to adopt a ruling for conducting an inquiry to study and analyse market developments.

In 2013, the GVH launched a sectoral inquiry into the hotel online booking market due to the identification of phenomena in the contracting practices of the online intermediaries which indicated that the competition between online travel agencies (OTAs)/online booking portals offering the same hotel rooms was restricted. The sectoral inquiry focused on the so-called 'price parity clause'. Pursuant to such a clause, a hotel binds itself not to offer its rooms for prices that are lower than those given to the website of the OTA on other distribution channels.

Pursuant to the conclusions of the sectoral inquiry, **the benefit of the price parity was seen in the form of a reduction of the searching costs** (searching time) of consumers. In contrast, **price parity had a negative effect on hotels**, as they would only be able to make larger profits if they could apply favourable prices on their own distribution channels and on platforms applying lower commission rates.

The GVH found that through the appearance of OTAs, **the market had become more transparent** as several accommodation offers could be compared even on the website of just a single OTA. This transparency led to an increase in price competition among hotels and in capacity utilisation of the hotels; however, there was no substantive price competition among the OTAs on the market, and the prices of accommodations were roughly the same in all sales channels in the first half of the period affected by the sectoral inquiry. The position of the GVH is in line with the conclusions of international procedures on the topic, according to which the **wide parity clauses (i.e. comprising all sales channels) may restrict competition by standardising market prices and increasing barriers to entry**. The application of wide parity clauses does not result in efficiency benefits to such a nature and to the extent and does not enhance consumer welfare to a degree that could justify the total restriction of competition among the single sales channels.

In the opinion of the GVH, also taking into consideration the danger of the free-rider phenomenon, **the use of a narrow parity clause may be the correct solution** to the market issues. A narrow parity clause may pave the way for accommodation providers (hotels) to be able to freely apply different price policies via certain sales channels. On the other hand, OTAs may announce special promotional periods at the expense of their commission rates and may also compete on prices.