

Most-Favoured-Nation (MFN) Clause in Sweden

MFN clauses have been assessed according to chapter 2, section 1 of the Swedish Competition Act (which concerns agreements that have as their object or effect the restriction, prevention or distortion of competition, equivalent to Art 101 TFEU). Case law regarding MFN clauses is very limited. The Competition Authority has not issued any guiding papers regarding MFN clauses.

Relevant case law

- **Decision by the Competition Authority in Dnr 596/2013** – The Swedish Competition Authority examined Booking.com's MFN clauses in a decision from 2015. The clauses stated that hotels were not allowed to offer better prices on the hotel's own sales channels than on Booking.com (narrow parity clauses) and that hotels were not allowed to offer better prices via Booking.com's competitors (wide parity clauses). The authority concluded that Booking.com's wide parity clauses infringed the Swedish Competition Act. The narrow parity clauses were deemed acceptable.
- **Decision by the Competition Authority in Dnr 595/2013** – Parallel to the investigation regarding Booking.com, the SCA initiated an investigation regarding Expedia's use of parity clauses similar to those used by Booking.com. The SCA's preliminary stand was that the clauses were limiting competition. During the investigation, Expedia notified the SCA that it would cease to use parity clauses that the SCA had preliminarily deemed to limit competition, and SCA therefore decided not to investigate the matter any further.
- **PMÖD T 7779-18 (Booking.com)** – Swedish hotel association Visita filed a complaint against Booking.com and claimed that Booking.com's use of narrow parity clauses, that had been deemed acceptable by the Competition Authority in the above decision, violated chapter 2, section 1 of the Competition Act. The Patent and Market Court of Appeal concluded that Visita had not sufficiently established that the clauses had an anti-competitive effect, and therefore dismissed the claim.