
MOST FAVOURED NATION CLAUSES: EMPOWERING INDIAN SELLERS IN THE DIGITAL MARKETPLACE

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ABSTRACT

This paper examines the problem posed by Wide Most Favored Nation (MFN) or parity clauses in online marketplace contracts, which require sellers to offer a platform terms no worse than those offered elsewhere. It situates this problem in India's fast-scaling e-commerce market, where a small set of large marketplaces often functions as the primary gateway to consumer demand, and where parity language is often drafted in dense and complex terms that many smaller sellers struggle to understand. The article analyzes how wide MFNs, which cover inter-platform or offline channels and non-price conditions, affect seller autonomy and market contestability, and outlines instrumentally what sellers can do about them under current Competition Act law. Doctrinally and from a policy perspective, the article synthesizes the stance taken by CCI in certain cases and reports including the (FHRAI v. MMT-Go & OYO, CCI e-commerce market study), with lessons from comparative international enforcement. The article identifies the harms that wide MFNs can cause to small scale sellers, including diminishing bargaining power by foreclosing price-based switching to lower-fee rivals when negotiating commission rates, reduction of channel experimentation opportunities by transforming tactical discounts and seasonal discounts etc. and increasing of switching costs by chilling entry and foreclosing substitute platforms. It makes clear that parity clauses are not per se illegal, since narrow parity may be justified by a free rider problem when a platform makes investments to generate discovery and demand but is less and less defensible the wider its scope is and the more powerful or dominant the intermediary is. The article concludes with a practical suggestive framework based on helping sellers identify how broad the parity clause is, push to remove or narrow wide MFNs, and secure carve-outs for loyalty discounts and one-to-one offline offers, limiting residual parity to price and excluding availability and commercial conditions parity, and improving transparency, collective action and negotiation, and dispute preparedness by keeping a systemic documentary record.

I. Introduction

Online marketplace contracts today increasingly contain Most Favoured Nation (MFN) clauses, also referred to as parity clauses. In simple terms, an MFN requires a seller to give the platform terms that are no worse than the terms the seller offers elsewhere. A narrow MFN usually targets only the seller's own direct channel, such as the seller's website. A wide MFN goes further. It prevents the seller from offering better prices or conditions on any other channel, including rival platforms, apps, or offline arrangements.¹

The clauses are designed in a manner which causes many sellers to miss them while entering into a contract with a large platform. Parity language is often embedded in a general pricing policy or tucked into schedules on promotions and platform-funded discounts. Some clauses are broad enough to cover coupons, bundles, shipping charges, cancellations, and even loyalty benefits. The MFN clauses provide for parity provisions which can limit the freedom of the upstream supplier when offering its product through other sales channels.² A seller may enter into such a deal thinking it only regulates the list price, and later discover that it in practice blocks any channel experiments or seasonal price offer strategies.

This matters now more than ever because for many sellers, marketplaces are now the main route to customers, no longer a supplementary channel. India's e-retail market has been estimated to be at around \$60 billion in 2024, with over 270 million online shoppers, and projections crossing \$160 billion by 2028.³

On the supply side, platform ecosystems are also expanding quickly. For example, one report on Flipkart's marketplace described a 25% to 30% rise in transacting sellers over a six-month period leading up to the 2025 festive season. For sellers subject to such MFN clause, scale is a double-edged sword; on the upside a large marketplace can deliver larger volumes of customers. It can lower customer-acquisition costs. It can give visibility and trust that a seller may struggle to build alone, on the flip side however, if a big share of your sales comes from

¹ Organisation for Economic Co-operation and Development (OECD), *Across-Platform Parity Agreements* (Background Note, Dec. 2015 Roundtable, published 2016), available at <[https://one.oecd.org/document/DAF/COMP/M\(2015\)2/ANN3/en/pdf.>](https://one.oecd.org/document/DAF/COMP/M(2015)2/ANN3/en/pdf.>)

² Ariel Ezrachi, *The Competitive Effects of Parity Clauses on Online Commerce*, 11 EUR. COMPETITION J. 488 (2015).

³ Bain & Co., *How India Shops Online 2025* (Mar. 26, 2025), available at <<https://www.bain.com/insights/how-india-shops-online-2025/>>

one platform, you have less credibility when you threaten to walk away. The platform knows the seller bears the bigger cost of exit.⁴

II. The MFN Problem for Sellers

Wide MFNs can harm sellers in three linked ways. *First*, they weaken bargaining power on commissions. If a rival platform offers lower commissions, a seller will normally offer a slightly lower price there and shift marginal volume. A wide MFN blocks that move. The dominant platform then faces less pressure to reduce its fee, because if the seller wishes to offer lower prices elsewhere it has to either reduce the price on their platform also and eventually themselves bear the cost of parity because the platform wouldn't reduce their commission.⁵ As a result, fee negotiations become one-sided and the seller bears the cost of parity, while the platform retains the benefit of market-wide price uniformity.⁶

Second, wide MFNs restrict channel strategies of sellers. Sellers may rely on targeted discounts to seed a new listing, push a new product line, or build a direct-to-consumer channel. With a wide MFN, however, every discount offered on a new channel must be mirrored on the dominant platform, even if the costs differ. The direct result of this is that sales experimentation is killed. It can also force sellers to avoid differentiated offers on other platforms. The UK's CMA has noted wide MFN's being referred to as a *showstopper* by sellers in certain cases.⁷ Where wide MFNs are drafted to not only cover the prices but also other commercial conditions, they can also affect channel-specific bundles and loyalty benefits, because offering better conditions on one channel including their own, risks triggering a parity obligation on the dominant platform.⁸

Third, wide MFNs can raise the seller's cost of switching. If the seller cannot offer lower price or better terms on a rival platform, which is a new entrant in the market seeking to differentiate on price or in form of other offers. That rival would then have fewer levers to attract customers,

⁴ Digital Competition Expert Panel, *Unlocking Digital Competition* 49 ¶ 1.135 (Mar. 2019), https://assets.publishing.service.gov.uk/media/5c88150ee5274a230219c35f/unlocking_digital_competition_furman_review_web.pdf.

⁵ Gönenç Gürkaynak et al., Most-Favored-Nation Clauses in Commercial Contracts: Legal and Economic Analysis and Proposal for a Guideline, 42 *Eur. J.L. & Econ.* 129, 137 (2016), <https://doi.org/10.1007/s10657-015-9515-y>.

⁶ Ariel Ezrachi, *The Competitive Effects of Parity Clauses on Online Commerce* 14 (Jan. 26, 2016).

⁷ Competition & Mkts. Auth., *Decision of the Competition and Markets Authority Under the Competition Act 1998: Price Comparison Website—Use of Most Favoured Nation Clauses*, Case 50505, at 70 (Nov. 19, 2020).

⁸ Autorité de la concurrence (Fr.), *Press Release: 21 April 2015: Online Hotel Booking Sector* 3, 6 (Apr. 21, 2015), <https://www.autoritedelaconcurrence.fr/en/entityprint/pdf/node/568>.

and potentially their entry may be restricted even if they might be more efficient than the incumbents.⁹ Over time, dependence on the largest platform can translate into higher non-price burdens for the sellers as well. These may be in the form of stricter return policies or more advertising spend to maintain visibility on the dominant platform.¹⁰

Even if the sellers go for *multi-homing* of their products, it doesn't meaningfully constrain the dominant platforms conduct,¹¹ as they still have to maintain their obligations under the MFN and cannot use the switching of marginal volume as leverage to get better conditions, as they still rely on dominant platforms for visibility and market share.

Parity clauses, however, cannot always be considered as harmful for sellers or competition at large. Platforms have argued that some form of narrow parity prevents free riding, where a platform invests in developing a rich assortment of products, but the customer completes the purchase from elsewhere, resulting in the dominant platform not being able to get return on their investment.¹²

However, the closer the clause moves towards a wider form, and the stronger the platform's market power, the weaker this justification becomes. This is why the modern antitrust analysis tends to distinguish between narrow and wide MFNs rather than treating parity clauses as a single broad category.¹³

IV. Strategic Steps for Sellers

The Competition Commission has already engaged with parity in platform contracting in recent cases. In *FHRAI v. MMT-Go & OYO* (CCI order dated 19 Oct 2022),¹⁴ the commission treated

⁹ Luca Aguzzoni et al., *Can 'Fair' Prices Be Unfair? A Review of Price Relationship Agreements* ¶ 0.34 (Off. of Fair Trading, OFT1438, Sept. 2012), https://www.learlab.com/wp-content/uploads/2016/04/Can-%E2%80%98Fair%E2%80%99-Prices-Be-Unfair_-A-Review-of-Price-Relationship-Agreements.pdf.

¹⁰ *Ibid* 9

¹¹ Competition Comm'n of India, *Market Study on E-Commerce in India: Key Findings and Observations* 31 ¶ 90 (Jan. 8, 2020), <https://www.cci.gov.in/images/marketstudie/en/market-study-on-e-commerce-in-india-key-findings-and-observations1653547672.pdf>.

¹² Luca Aguzzoni et al., *Can "Fair" Prices Be Unfair? A Review of Price Relationship Agreements* ¶¶ 6.71–6.73 (Off. of Fair Trading, OFT1438, Sept. 2012), https://www.learlab.com/wp-content/uploads/2016/04/Can-%E2%80%98Fair%E2%80%99-Prices-Be-Unfair_-A-Review-of-Price-Relationship-Agreements.pdf.

¹³ OECD, *Implications of E-Commerce for Competition Policy* 28–29 § 2.6 (2018), https://www.oecd.org/content/dam/oecd/en/publications/reports/2018/03/implications-of-e-commerce-for-competition-policy_05e9d404/b7978bd0-en.pdf.

¹⁴ Fed'n of Hotel & Rest. Ass'ns of India (FHRAI) & Anr. v. MakeMyTrip India Pvt. Ltd. & Ors., Case Nos. 14 of 2019 & 01 of 2020, ¶¶ 248, 263, at 95–96, 101–02 (Comp. Comm'n of India Oct. 19, 2022)

wide price/room parity along with other restrictions as creating and reinforcing an anti-competitive effect on the overall market. Separately the e-commerce market study published by CCI, flags platform price parity restrictions as a recurring concern in India's online intermediation markets. With parity clauses now already appearing in Indian platform disputes, the immediate question becomes, what sellers can do on the ground to avoid being subject to such contractual terms. This final section of the article discusses certain seller oriented steps, within the scope of the current Competition Act framework to narrow wide MFNs through tighter and more precise contract drafting, making carve-outs for structured discounts and loyalty benefits, and improving sellers' ability to negotiate and enforce their rights through transparency requests, collective representation, and proper record-keeping.

Recommended measures

1. Identify the scope of the parity obligation before execution or renewal. A seller may first do an internal classification of whether the parity clause in the contract is wide or narrow, and whether it applies only to price or also to conditions and availability.¹⁵ As discussed in previous sections, this classification matters because primarily strategy restriction and other anti-competitive concerns are more likely to be triggered by wide parity clauses.
2. Seek removal of the wide parity clause as the baseline contractual position, and if parity is still insisted upon by the platform, then confine it to a narrow form. This form of narrow parity can be limited to the seller's own publicly available direct channel. This reflects the structural outcomes in OECD's OTA enforcement, where restrictions affecting rival platforms were removed while narrower obligations were treated as less intrusive in some settings.¹⁶
3. The sellers must also push for the inclusion of an express carve-out for loyalty or closed user group discounts. Foreign settlements in online hotel booking have treated such carve-outs as important, and made clear that the parity clauses should not prevent discounts to

¹⁵ Morten Hviid, *Vertical Agreements Between Suppliers & Retailers That Specify a Relative Price Relationship Between Competing Products or Competing Retailers* 14 (OECD Competition Comm., DAF/COMP(2015)6, Oct. 19, 2015), [https://one.oecd.org/document/DAF/COMP\(2015\)6/en/pdf](https://one.oecd.org/document/DAF/COMP(2015)6/en/pdf).

¹⁶ Hviid, *supra* note 16, ¶ 45.

loyal consumers.¹⁷ From an economic standpoint, a loyalty or closed user group carve-out helps in preserving a limited but meaningful space for price differentiation without triggering any platform-wide parity obligation. This would allow sellers to reward lower-cost channels and promote direct sales efficiency by offering targeted discounts, which in turn restores competitive pressure on platforms to compete on commissions and service quality rather than solely relying on market-wide price coherence. Because the discount is limited to a defined group, it also restricts any free-riding concerns that are quoted as reasons by platforms behind the imposition of wide parity clauses.

4. Include an express carve-out for offline and one-to-one direct offers, subject to non-publication safeguards. This particular step is of relevance to protect against cross-channel parity clauses. A parity clause might restrict individual sellers from not only offering lower prices on other platforms or their own websites, rather in their own physical stores as well. A seller in such scenarios may preserve their direct selling liberty by carving out offline and individually communicated offers, for example, offers made on-site, by telephone, email, or instant messaging, provided that they are not published as general public prices. This is a practical method for developing a direct-to-consumer channel without triggering platform-wide matching, and has been expressly contemplated in foreign commitments.¹⁸
5. Sellers should try to minimise parity over “commercial conditions” and availability as well, not only the price. If the parity obligation extends beyond price, it can indirectly eliminate channel-specific differentiation and offerings such as bundles, add-ons, and preferential cancellation or service conditions. The OECD has also noted that in many cases removing of parity obligations relating to availability and commercial conditions, have permitted hotels (sellers) to offer better conditions and allocate more inventory through rival channels and direct channels, eventually resulting in a better competitive environment.¹⁹ Similarly in India, sellers should aim to limit parity clauses only to price parity allowing for differentiated bundles, add-ons, and inventory allocation helping sustain competition in the market.

¹⁷ Autorité de la concurrence (Fr.), *21 April 2015: Online Hotel Booking Sector 3*, 2 (Apr. 21, 2015), <https://www.autoritedelaconcurrence.fr/en/print/pdf/node/568>.

¹⁸ Swedish Competition Auth., *Decision (Booking.com)*, Ref. No. 596/2013, ¶¶ 40, 47 (Apr. 15, 2015), https://www.konkurrensverket.se/globalassets/dokument/engelska-dokument/beslut/13_0596e.pdf.

¹⁹ OECD, *Implications of E-Commerce for Competition Policy—Note by the United Kingdom*, DAF/COMP/WD(2018)53, ¶ 27 n.29 (May 28, 2018), [https://one.oecd.org/document/DAF/COMP/WD\(2018\)53/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2018)53/en/pdf).

6. Even if some parity restrictions are conceded, a seller can push for clearer and more transparent contract terms that spell out why the seller is being prevented from offering different terms on other channels, along with the exact scope of the restriction and how it will be enforced. The EU Platform-to-Business framework can serve as a useful reference point for this kind of disclosure.²⁰ A seller might also look at working collectively through a trade association to negotiate standard parity clauses and carve-outs. That same framework is helpful here too, since it expressly allows representative actions.²¹ However it must be ensured that such coordination should stay strictly focused on getting contracting terms and must not drift into areas of anti-competitive coordination like resale pricing or market sharing. Lastly, a seller should keep detailed, contemporaneous records of draft markups, rejected carve-out requests, and missed promotional opportunities as proof of platform's imposition and enforcement of the wide MFN.

V. Conclusion

Wide MFNs are often dismissed as standard clauses. For many Indian sellers, they operate as a binding restriction with serious commercial consequences. They are a restraint that can quietly shift bargaining power, reduce channel flexibility, and lock sellers into a high-commission equilibrium. The goal of this article isn't to push for the elimination of all parity language, but to resist wide MFNs that prevent sellers from using competition between platforms to improve the terms they receive and grow sustainably while also improving the overall competitive environment.

²⁰ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on Promoting Fairness and Transparency for Business Users of Online Intermediation Services, art. 10(1)–(2), 2019 O.J. (L 186) 57, 73, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1150>.

²¹ Regulation (EU) 2019/1150, *supra* note 22, art. 14(1).