Most favoured customer clauses have been in existence for over a century and are likely to remain in use for many years to come. These clauses are typically found in contracts between businesses, where one party agrees to offer the same or better terms to a preferred customer compared to other customers. The presence of such clauses can have significant implications for competition, consumer welfare, and market dynamics.

### Legal Context

Most courts and legal systems are divided on the permissibility of most-favoured-customer clauses (MFCs) under antitrust laws. The European Commission has been particularly active in scrutinizing these clauses, with a focus on assessing their potential to distort competition and harm consumers. The U.S. Department of Justice has also been involved in scrutinizing MFCs, with some notable cases such as Blue Cross and Blue Shield of Michigan v. Blue Cross Blue Shield of Michigan and United States of America v. Blue Cross Blue Shield of Michigan.

### Theoretical and Empirical Considerations

MFCs are often examined in the context of antitrust laws to determine whether they are abusive or merely legitimate business practices. The key concern is whether the clause provides an unfair advantage to the preferred customer, potentially at the expense of other customers or the market as a whole.

#### Antitrust Analysis

- **Predatory Pricing:** The concern is whether the MFC is used to engage in predatory pricing. This involves setting prices below cost to drive competitors out of the market, with the intent to later increase prices. The U.S. Department of Justice tends to view MFCs with skepticism, particularly when they are used to facilitate predatory pricing.

- **Predation:** A related concern is whether the MFC is used to engage in predatory pricing. This involves setting prices below cost to drive competitors out of the market, with the intent to later increase prices. The U.S. Department of Justice tends to view MFCs with skepticism, particularly when they are used to facilitate predatory pricing.

- **Intra-Brand Competition:** MFCs can also be examined in the context of intra-brand competition, where the preferred customer is offered better terms compared to other customers for the same product. This can lead to lower prices for the preferred customer but potentially higher prices for other customers.

- **Exclusion:** MFCs can be used to exclude or limit competition from other suppliers. This is a concern when the MFC is designed to prevent new entrants from accessing the market or when it is used to maintain market power.

### Practical Considerations

MFCs may be used in various industries, including health insurance, telecommunications, and film distribution. In each case, the analysis of an MFC requires a careful examination of its terms and the competitive environment to determine whether it is likely to harm competition or consumers.

- **Healthcare:** In the healthcare industry, MFCs are often used in contracts between insurers and hospitals. These clauses can be used to offer lower prices to preferred customers, potentially at the expense of other customers.

- **Telecommunications:** In the telecommunications sector, MFCs can be used to offer preferred terms to a select group of customers, potentially limiting competition and raising prices for other consumers.

- **Film Distribution:** In the film distribution industry, MFCs are used in the virtual print fee model to exclude other distributors and limit competition.

### Conclusion

Most-favoured-customer clauses are controversial and their permissibility under antitrust laws remains a subject of debate. The analysis of these clauses requires a careful examination of their terms, the competitive environment, and the potential for harm to competition and consumers. The legal landscape in this area is evolving, with courts and regulatory bodies continuing to grapple with the challenges presented by MFCs.

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*Note: The text above is a hypothetical analysis and does not reflect the actual legal or factual circumstances of any specific case.*