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5. The Department of Justice has also initiated antitrust enforcement actions in health care provider and insurance markets against MFNs. As the Department recently noted, MFNs in these markets

preventing

For instance, in *United*

States v. Delta Dental Plan of Rhode Island

insurer, providing insurance to about 35-45 percent of Rhode Island residents covered by dental insurance. Delta Dental had contracts with 90 percent of the dentists in the state. Pursuant to Delta's agreements with these dentists, each agreed to an MFN clause conferring upon Delta Dental the right to lower its reimbursements to the lowest fee the dentist accepted from any other plan. The effect of the MFN was that

g[ave] its participating dentists strong disincentives to contract with dental managed care plans at fees

6.

by Blue Cross Blue Shield of
continuing concern with the potential anticompetitive

effects of MFNs. In that case,

use and enforcement of MFNs in its contracts with seventy Michigan hospitals. The contracts required those hospitals to charge other commercial insurers

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10. Second, MFNs can facilitate price coordination. MFNs can reduce the incentive to cheat on a price-fixing scheme by increasing the costs of doing so. Under an MFN the low price offered on a particular contract becomes not just a one-time opportunity for the firm offering the discount to gain some incremental sales volume, but rather an occasion for across-the-board revenue losses as contract prices are reset.

11.