

Predatory Pricing Practices in India

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Abstract: *This paper explains the predatory pricing practices in India in detail and also examines a few landmark cases on the topic. Predatory pricing can be described as pricing below a predetermined level in order to eliminate competitors and, as a result, reduce competition in the long run. This type of behaviour is detrimental to both contestants and the competition. Predatory pricing's main goal is to develop a monopoly in the market and eliminate competition. The company will lose money in the beginning, but by using this strategy, the corporation will reap long-term rewards. Investors regard such a low cost as a smart approach to expand market share and profitability in the long run.*

Keywords: predatory, pricing, practices

1. Introduction

Offering a reduced price in order to survive in the market or while entering the market (penetrative pricing) appears to be a strategic option. However, if this price reduction is recognized as predatory pricing, it might become a real concern.

Predatory pricing is an exclusionary strategy in which the market's dominant firm lowers its prices to the point that it begins to lose money. The goal of lowering prices is to eliminate competition from the market. It tries to prevent new entrants from entering the market and force incumbent players to depart by drawing all of their consumers; the goal is to take advantage of this dominant position. The company may suffer initial losses, but it will eventually benefit since it will be the only dominating firm remaining in the market, limiting competition. To make up for the losses, the corporation will raise its rates.

As a misuse of dominant position, Predatory Pricing is prohibited in India under Section 4 of the Competition Act 2002. It is defined as "the sale of goods and services at a lower cost than that determined by legislation, hence limiting competition and eliminating competitors."

Predatory Pricing is determined by the following factors:

1. Dominance:

To compete in a market with low product pricing, a corporation must have significant capital reserves, market share, and financial resources. As a result, only the market's most powerful enterprises may engage in predatory pricing. In terms of geographical market, related items, and demand, dominance can be measured.

2. Roadblock for competitors:

At the time of entrance, a roadblock should be placed to prevent competitors from entering and re-entering. The legislation only prohibits predatory pricing for dominant market players, and a range of variables are reviewed to determine if a corporation is a dominating player, including economic analyses, consumer preferences, business realities, laws, and so on.

3. Excess Capacity:

By artificially cutting and lowering prices, the dominating market must be able to create demand and recruit clients. If a corporation fails to do so, demand will outstrip the predator's output, and competitors may be able to re-enter the market.

Elements of Predatory Pricing:

In the life cycle of predatory pricing, there are two main phases: the sacrifice phase, in which the firm suffers losses as a result of lower pricing, and the recoupment phase, in which the firm recovers its losses as a result of lower pricing.

There are a few requirements that must be met before a case may be classified as predatory pricing:

- In the relevant market, the company must have a dominant position.
- The company must have a large cash reserve, which means it must be able to absorb losses during the initial stage.
- After removing all current competitors, the company needs have a large manufacturing capacity to match the increasing demand.
- There must be certain hurdles to access for newcomers. It must be difficult for new entrants to break into the market.

In the case of M/s. Transparent Energy Systems Pvt. Ltd. v. TECPRO Systems Ltd., the Competition Commission of India, a statutory body established under the Competition Act, 2002, found that three requirements must be met to prove that a dominant position has engaged in predatory pricing:

- That the firm's pricing for the items it produced or the services it provided had to be less than the average cost of goods production or service procurement.
- This kind of price manipulation of the product or service was with the motive to become a monopolistic player, with the intention of wiping out all the other competitors from the market.

- The firm must have planned to recover or recoup the losses incurred due to the lowering of the prices later by increasing the prices back again after foreclosing the competition from the market or barring new entrants in the market.

Why is Predatory Pricing illegal in nature?

Predatory pricing is an anti-competitive conduct that has a negative impact on market competitiveness. It results in the foreclosure of competition, which implies that neither existing firms nor new entrants are able to compete and enter the market. If predatory pricing is permitted, small businesses, MSMEs, and start-ups would suffer at the hands of the market's dominant player. Consumers will suffer in the long term if the dominant player develops a monopoly in the future.

Under Section 18 of the Competition Act, the Competition Commission of India is responsible for "eliminating practises that have an adverse effect on competition, promoting and maintaining competition, protecting the interests of consumers, and ensuring freedom of trade carried on by other participants in markets in India." As a result, it is the commission's job to put an end to predatory pricing, which is defined as a misuse of dominant position through pricing mechanisms.

Who can Initiate a Case for Predatory Pricing?

CCI has the authority to investigate alleged cases of predatory pricing under Section 19 of the Competition Act.

- If it believes there is a case against the firm, it can act suo moto.
- Any person, consumer, or their association or trade association; or a referral made to it by the Central Government, a State Government, or a statutory authority;
- or a complaint received, accompanied by such fee as may be determined by regulations, from any person, consumer, or their association or trade association; or a reference made to it by the Central Government, a State Government, or a statutory authority.

Procedure Followed by Competition Commission of India while Determining Predatory Pricing:

If the commission considers a prima facie case has been established after receiving information under Section 19, it may direct the Director General of Investigations. The Director General is obligated to submit a report to the Competition Commission within a certain time frame. The report is sent to the parties involved by the Commission. If the report finds that any provision of the act has been violated, it asks interested parties to submit objections or suggestions. After examining the Director General's report as well as the suggestions/objections received, the Commission may issue relevant orders or order additional inquiry.

Impact on customer:

A high-level committee known as the Raghavan Committee was constituted to prepare a report that addressed the issues of dominance abuse. Predatory pricing was one of these issues, and the impact on consumers was discussed [1].

The Committee reached conclusions similar to those reached by India's Supreme Court in the case "Haridas Exports v. All India Floating Glass Mfrs. Association and Ors [2]."

In this case, the court held that if a product is sold at a lower price than its average cost, it need not be prohibited all of the time. The finding was accompanied by a stipulation that the price reduction should not stifle the market's ongoing competition. This is done to ensure that consumers' interests are protected. In the committee's findings, it was said that price reductions should be limited only when they are used to stifle competition and eliminate other competitors. It should not, however, impose restrictions on enterprises with a larger market share due to their superior efficiency and lower prices. As a result, it's important to distinguish between a purposeful endeavour to harm competition and diminution due to the dominant market player's superior degree of efficiency. In the first scenario, the consumer's interests are impeded, and they suffer negative consequences. When a predator lowers the price of a product to stifle competition and eliminate competitors, the dominating firm will raise prices to make up for the losses it suffered during the period of decrease and to increase profits.

Legal remedies against predatory pricing:

The Competition Act of 2002, which replaced the Monopolies and Restrictive Trade Practices Act of 1969, aims to protect the welfare of customers by ensuring healthy competition in the market among the businesses. After recognising the dangers and difficulties posed by predatory pricing, which is primarily an abuse of the 'dominant position' in the market, which is illegal in and of itself, the Indian Competition Act, 2002, has been modelled after the English Competition Act, 1998, and the Clayton Anti-Trust Act, 1914. The provision is as follows:

Section 4(2) (a) of the Competition Act, 2002 states that:

There shall be an abuse of dominant position under Sub-section (1), if an enterprise or a group,-

- Directly or indirectly, imposes unfair or discriminatory-
- Condition in purchase or sale of goods or service; or
- Price in purchase or sale (including predatory price) of goods or Service

Explanation: For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-

clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition.

Role of competitors in predatory pricing:

When a single firm in the market rises almost instantly, it's usually due to a dominant position misuse and predatory pricing that follows. These two ideas are considered as overlapping and forming a bridge across legal and economic borders, as well as a bridge over existing market players. Although such activities are deemed to be illegal, they are simply one of the many ways in which a company or group might misuse its position of dominance.

Predatory Pricing is mostly dependent upon the use/misuse of dominant position. As per Section 4(2) of the Competition Act, 2002 dominant position has been described as:

“dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to-

- (i) Operate independently of competitive forces prevailing in the relevant market; or
- (ii) Affect its competitors or consumers or the relevant market in its favour

To achieve a dominant position, a business must have sufficient control and influence over the relevant sector of the market to affect it by 50% or more, given that the other competitors have a substantially smaller proportion of the active market. Though the company's financial strength is crucial, other factors such as the presence of other players in the relevant industry/market are also important in determining whether the entity is capable of exerting a dominant position.

2.Review of Literature

• Jio case:

The Indian telecom industry has been in turmoil for the past three years, owing to a new entrant in the market known as "Jio," a product of the Reliance Group of Industries conglomerate. The services under the offer, which were previously solely available to employees (i.e. Unlimited Calling for Life and Unlimited Data Benefit), were made available to the general public, resulting in a flood of people wanting to take advantage of the suggested perks. From what had been predicted, the change not only brought in a slew of new customers, but it also generated a sense of heated competitiveness among competitors. This resulted in a multi-fold reduction in the prices of all other prominent service providers' services, portraying the increase in competition as an act of deliberate sabotage. Though the claims cannot be dismissed as baseless, the consumer-centric market has embraced the new entrant and competition with open arms, making it even more difficult for competitors to establish a competitive foothold. Despite the Reliance Group of Industries' repeated claims of "Predatory Pricing" and its position as a dominating player in the market, the conglomerate has had

a significant impact on the Indian telecom sector and its main participants.

• Ola case:

Fast Track Call Cab filed a complaint against ANI Technologies Pvt. Ltd., alleging that the company had violated many provisions of the Competition Act. The OLA Cab service is administered by the respondents.

After reviewing the petition, the CCI directed the Director-General shall examine the case and resolve it within 60 days after receiving the order under Section 26(1). During the inquiry, the Director-General shall question about the behaviour of ANI Technologies' officials in order to assign accountability to them if they are found to be in violation of the Act's requirements. The Commission noted that the corporation is accused to pay out more on inducements (other than the variable costs it incurs) and discounts to customers and their drivers in relation to the income they generate, citing the Act's provisions against predatory pricing. It was determined that ANI Technologies spent Rs. 574 per trip while only making Rs. 344, resulting in a loss of Rs. 230 per trip.

The propriety of these estimations is a topic of debate; plainly, the Commission considers they imply predatory pricing intended to drive competitors out of the market. Fast Track, a radio taxi service provider in Kerala, Tamil Nadu, Maharashtra, Andhra Pradesh, West Bengal, and Karnataka, claimed that the opponents had received financial assistance from several agencies and that they were engaging in abusive practises such as predatory pricing as a result of the funding [3]. The watchdog noted that the claimed company's market share is very low, and that it is impossible to be in a dominating position with such a low market share, according to data available on the Government of NCT of Delhi's website [4]. Finally, because there was no position of authority, the issue of abuse was not raised [5].

• Meru cabs Vs Uber case:

Meru Cabs petitioned CCI in 2015, arguing Uber Cabs was charging them too much. It was pointed out that Uber was losing Rs. 204 every journey, which was unsustainable. It was offering steep discounts in exchange for a lower fare. Uber's appeal against the COMPAT's investigative order was dismissed by the Apex Court. According to the Supreme Court, Uber is a dominating competitor in the market, and its steep discounts demonstrate that there is a prima facie case of abuse of dominance under Section 26. (1). The court decided not to overturn the COMPAT's decision and ordered that the act's inquiry be continued.

3.Research Methodology

In this paper, I conducted an in-depth qualitative and exploratory research using the secondary data. I have reviewed various research papers and presented the findings. The secondary data was in the form of research papers, online articles, textbooks and bare acts. Through the deep analysis we will find out the increasing cases of

predatory pricing practices in India and will understand the workings behind it. For the data collection, online databases such as EBSCO, ERIC, Research gate, Google Scholar, and SAGE were used. Further the collected data was used for the assessment by using the appropriate frameworks and analysis tools.

4. Conclusions and Findings

Consumers and rivals are protected by competition law against the unfavourable effects of predatory pricing. Predatory pricing is rampant these days, as evidenced by a slew of recent examples. Several tiny marketplaces are engaging in anti-competitive measures in order to unfairly entice the markets. As a result, there is a pressing need for legislation against predatory pricing. However, while the drafting committee has done a great job of outlawing and prohibiting predatory pricing, there is still much more that can be done to ensure a fair market. One of the most essential issues, among many others, is to eliminate power concentration. As important as it is for consumers to understand the value of money in connection to the items they desire, it is also critical for businesses to play fairly in order to establish themselves as a trustworthy and reputable company. The notion of fairness applies to all competitors, regardless of their backgrounds or financial assets. Predatory pricing, on the other hand, might be viewed as a preventative measure adopted by government agencies to keep an eye on illegal market organisations or company activities.

Competition Law is having over with the obligation of shielding the consumers and also the competitors from the adverse impact of predatory pricing [6]. The Indian competition legislation and the regulators charged with enforcing it appear to have taken the age-old adage of "living in the moment" far too seriously. To develop into a really fair and free market, a sense of requirement for a sapient legislation obtruding predatory pricing is felt. The drafting committee did a good job of prohibiting predatory pricing, but it failed to provide a detailed description of predatory pricing, which was needed.

Declaration

This is to certify, that the research paper submitted by me is an outcome of my independent and original work. I have duly acknowledged all the sources from the ideas and extracts have been taken. The paper is free from any plagiarism and has not been submitted elsewhere for publication.

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