Explainer

A research series that summarizes key socio-techno-legal concepts underlying the technologies we use daily

Predatory Pricing

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What is ‘Predatory Pricing’?

Consider a company “XYZ Inc.” that dominates the market of a particular product or can afford long-term losses.

‘Predatory pricing’ occurs when XYZ Inc. decides to start selling its own product cheaper than what it costs to make it, with the sole objective of eliminating nascent or existing competition, and control the market again.

It sounds a lot like the good old discounting!

That's right...in a way.

Predatory pricing does include a significant amount of heavy discounting, or what is popularly called 'deep discounting'.

However, the two differ.

Deep discounting, for example, can be a very legitimate way for a new company to attract customers in a market with unusually high prices.

Or, it can also act as an incentive for consumers to try different a new brand of products, thereby enabling competition.

So what makes predatory pricing an anti-competitive practice?

Typically, recognising and correcting predatory pricing by any entity involves asking four critical questions:

1. **Market dominance,** "does the entity in question dominate the relevant market?"
2. **Price-Below-Cost,** "is the price being charged below the cost of production?"
3. **Intent to harm,** "are the actions of the entity being done with the intention to limit competition?"
4. **Recoupment,** "can the entity realistically recoup its losses in the long term?"

What has predatory pricing generally looked like?

Let's consider an example from the US!

In 1910, the US Supreme Court was called to look into many practices of the Standard Oil Company of New Jersey in the market of petroleum refining. One of these practices pertained to "local price cutting to suppress competition."

Revelations	To eliminate competition in an area, Standard Oil charged local consumers a 'below-cost' price, while over-charging others to make up for this loss-making strategy
Outcome	In a unanimous 9-0 verdict, the Court held Standard Oil to be a monopoly and ruled for it to be broken up into many different companies

That seems like an ancient issue! Do we have any recent examples?

We do. In 2010, Icera, a European startup that manufactured chip-sets, filed a complaint against Qualcomm - a dominant market player - alleging that the latter hindered Icera's success by selling a certain subtype of chip-sets below cost.

Revelations	When faced with the risk of being out-competed by Icera, Qualcomm supplied certain quantities of three of its chip-sets below cost, between 2009 and 2011, with the intention of eliminating the former
Outcome	Although Qualcomm appealed the initial ruling, it was stll fined EUR 238 million for predatory pricing practices.

Indeed, digital markets are especially vulnerable to predatory pricing!

There are a few traits inherent to how digital markets work that make predatory pricing more likely:

- Personalised and customised pricing techniques make it difficult for consumers and regulators to know the true pricing baseline
- Dominant platforms that navigate multiple markets don't have to wait to recoup their losses; they can just over-charge in one of their dominant markets
- Network effects ensure that first-movers can capture significant market share, and then use predatory pricing to impose high entry barriers

What about India’s experience with predatory pricing?

Because Section 4 of the Competition Act 2002 specifically prohibits predatory pricing by dominant firms, the Competition Commission of India (CCI) has frequently engaged with the issue.

Let us look at a few recent examples, specifically pertaining to
i) the online hotel-booking industry,
ii) ecommerce and quick commerce, and
iii) the telecom market

Online hotel-booking platforms

Acting on a series of complaints against hotel-booking platforms, CCI fined MMT-Go (a conglomeration of MakeMyTrip and GoIbibo) ₹223 crore for indulging in predatory pricing, among other things. The matter is currently pending before the National Company Law Appellate Tribunal (NCLAT).

Ecommerce and food delivery platforms

CCI is currently investigating Amazon and Flipkart, and early reporting around the case has indicated the presence of ‘predatory pricing’ practices. Similar allegations have also been made against Instamart, Blinkit, and Zepto, but CCI’s response to them is awaited.

Telecom and internet service providers

Jio’s deep discounting practices have led to a fall in the industry’s average revenue per user and rapid market consolidation. Although TRAI, the sectoral regulator, has ignored predatory pricing allegations, CCI’s market study points to the effects of weakened competition on service quality and increased tariffs in the long term.

Before you go, here's a brief recap!

1

Although predatory pricing differs from deep discounting, the two are closely tied and often differ only in intent and impact.

Heavy discounting by dominant firms or deep-pocketed startups could easily appear as a fair business strategy, while having a clear anti-competitive impact on the market.

2

Predatory pricing is not a new phenomenon and it is not limited to digital markets only!

The case of Standard Oil, and many others like it, are prominent examples of predatory pricing from before the advent of digital platforms. In fact, learnings from these cases are integral today more than ever.

3

However, certain traits make digital markets especially vulnerable to predatory pricing

Network effects, data-driven personalisation, and access to multiple markets allows dominant 'gatekeeper' firms to enter new sectors and leverage long-term predatory pricing to fend off competition.

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