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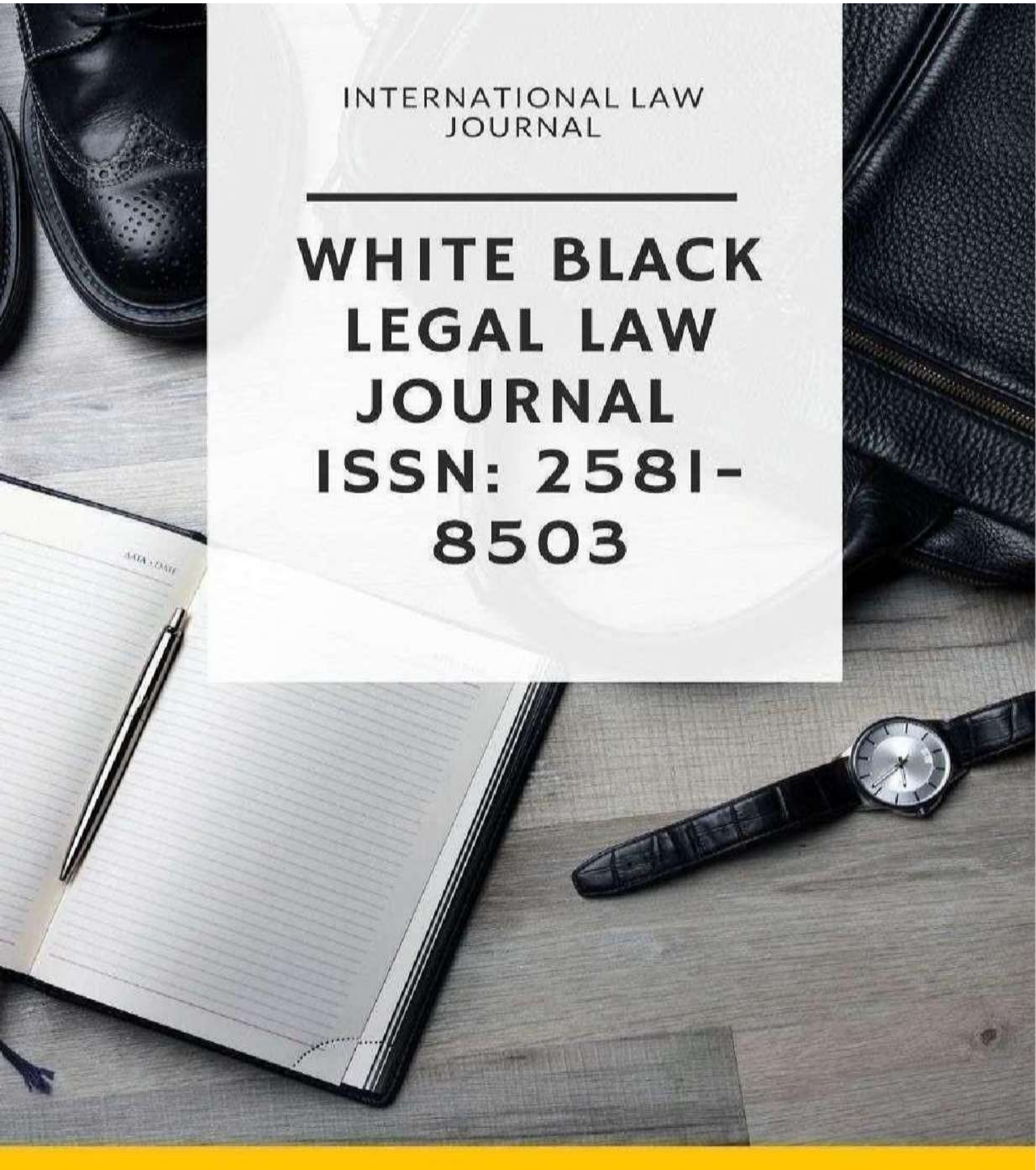

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

UNCOVERING THE STATERGIES OF PREDATORY PRICING: AN IN-DEPTH ANALYSIS

AUTHORED BY - PORCHILAI

Abstract:

In the present era, every other day in India, there is a new startup offering a new competition in the market. This study delves into the complex phenomenon of predatory pricing, a controversial business strategy employed by firms to gain a competitive edge. Through a comprehensive analysis of market dynamics, pricing strategies, and industry trends, we uncover the tactics used by firms to engage in predatory pricing. Our research reveals the devastating effects of predatory pricing on competition, innovation, and consumer welfare. We also identify the challenges faced by regulators in detecting and preventing predatory pricing, and propose policy recommendations to mitigate its harmful consequences. This study provides valuable insights for businesses, policymakers, and scholars seeking to understand and address the implications of predatory pricing in various industries. This article is to understand the dynamics of competition Market by solely relying on price fixing. This paper is qualitative in nature and based on secondary data collected from different sources.

Keywords:

Predatory pricing, Monopolization, Market dominance, Against consumer welfare, Anti-competitive behavior.

INTRODUCTION:

"Predatory pricing, a controversial business strategy in which companies deliberately lower prices to harm competitors and gain market share, has long been a topic of debate among economists, policymakers, and industry leaders. And my hypothesis is based on "firms that engage in predatory pricing are more likely to achieve monopoly power and stifle innovation in their industry." While some argue that aggressive pricing tactics can stimulate competition and benefit consumers, others contend that they can lead to monopolization, stifle innovation, and ultimately harm consumer welfare. As industries from tech to healthcare to finance grapple with the implications of predatory pricing, it is essential to understand the complex dynamics at play and the role that regulatory bodies can play in preventing abuses of market power."

PREDATORY PRICING:

Generally, predatory pricing is selling the product at an very low cost that even causes loss to the company in-order to eradicate the co-competitors and to became monopoly.

Under section 4(b) of competition act 2002, predatory pricing is defined as following:

"predatory price" means the sale of goods or provision of services, at a. price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce com- petition or eliminate the competitors.[1]

As the definition contains the word "*below the cost*", It has to be know that how a price for a product has been fixed:

Generally, prices can be fixed in various ways, depending on the market structure, industry, and business strategies. Here are some common methods[2]:

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1. Cost-plus pricing: Calculate costs, add a markup, and set the price.
2. Competitive pricing: Set prices based on what competitors are charging.
3. Value-based pricing: Set prices based on the perceived value to the customer.
4. Dynamic pricing: Adjust prices in real-time based on demand and supply.
5. Penetration pricing: Set a low initial price to gain market share.
6. Skim pricing: Set a high initial price to maximize profits before competition increases.
7. Bundle pricing: Set a price for a bundle of products or services.
8. Price discrimination: Charge different prices based on customer segments.
9. Auction pricing: Set prices through auctions or bidding processes.
10. Government pricing regulations: Set prices based on government regulations or price controls.

The arithmetic behind price fixing, including predatory pricing, typically involves calculating costs, profits, and market dynamics. Here are some key calculations:

1. Cost calculation: Firms calculate their costs, including production, distribution, and marketing expenses.

[1] Sec.4(b) of competition act,2002(12 of 2003).
[2] Predatory pricing by William Barnett II, Michael saliba, Walter block,https://www.researchgate.net.. last visited on jul,10,2024 at 11.31 am.

2. Profit margin calculation: Firms determine their desired profit margin, which is the difference between the selling price and cost.
3. Pricing strategy: Firms set prices based on their costs, profit margins, and market conditions.
4. Market share calculation: Firms estimate their market share and adjust prices to gain an advantage over competitors.
5. Break-even analysis: Firms calculate the point at which their sales revenue equals total fixed and variable costs, ensuring they can sustain their pricing strategy.

In predatory pricing, the arithmetic might also involve:

1. Setting prices below cost (e.g., selling at a loss) to drive competitors out of business.
2. Calculating the optimal price point to maximize market share and profits once competition is eliminated.
3. Estimating the time frame required to recoup losses incurred during the predatory pricing phase.

Thus the word "below the cost" means that the product should not be sold for loss. That is with an ill intention to get rid of all the competitors and to be the sole company in the market (i.e) monopoly.

The word has been in such way that the price fixing includes production cost and expenses occurred, product's demand in the market and if there any regulation by the government to set within the maximum and minimum limit of the prices.

Thus if the person sell his product below the cost he is accused or alleged under predatory pricing.
The act also provides certain exception regarding predatory pricing as follows[3]:

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.

[3] Sec.4 explanation 1 of competition act,2002(12 of 2003).

Predatory pricing can hurt consumers in several ways[4]:

1. Reduced choice: By driving competitors out of business, consumers may be left with only one or a few options, reducing choice and innovation.
2. Higher prices: Once the competition is eliminated, the dominant firm can raise prices, exploiting consumers who have no alternative options.
3. Lower quality: Without competition, firms may reduce quality or services to cut costs, negatively impacting consumer experience.
4. Barriers to entry: Predatory pricing can create barriers for new businesses to enter the market, stifling innovation and limiting consumer access to new products or services.
5. Reduced price competition: Predatory pricing can lead to a lack of price competition, resulting in higher prices for consumers across the market.
6. Reduced investment in research and development: Without competition, firms may reduce investment in research and development, limiting innovation and progress.
7. Job losses: Predatory pricing can lead to job losses as competitors are forced out of business, impacting local communities and economies.

MONOPOLIZATION:

Monopoly plays a significant role in predatory pricing as a monopolist can use predatory pricing to maintain or strengthen its market dominance. Here's how[5]:

1. Price manipulation: A monopolist can lower prices temporarily to drive competitors out of business, then raise prices again to recoup losses and maximize profits.
2. Barriers to entry: Predatory pricing can create barriers to entry for new firms, making it difficult for them to compete with the monopolist's low prices.
3. Market share expansion: A monopolist can use predatory pricing to expand its market share, making it even harder for competitors to survive.
4. Deterring entry: The threat of predatory pricing can deter potential competitors from entering the market in the first place.
5. Maintaining dominance: Predatory pricing helps a monopolist maintain its dominance by preventing competitors from gaining a foothold in the market.

[4] "Predatory Pricing: A Survey of the Literature" by Patrick DeGraba (Journal of Economic Surveys, 1999).
[5] "Predatory Pricing and the Limits of Antitrust" by Herbert Hovenkamp (University of Pennsylvania Law Review, 2003).

By using predatory pricing, a monopolist can reinforce its market power, making it difficult for other firms to compete, and ultimately leading to a less competitive market with higher prices and reduced innovation.

Monopolization and attempts at monopolization are both prohibited by Section Two of the Sherman Act[6].While it is not unlawful to be a monopolist, Section Two is broken when monopoly activity is used to obtain or hold monopoly power. As common law evolved, Several actions that qualify as monopoly activity have been recognized by federal courts.When defining "monopoly conduct," courts frequently distinguish it from "competition on the merits," which refers to any legitimate strategy for gaining monopolistic power, such as outperforming competitors in terms of efficiency.[7]

This section describes how predatory pricing damages consumers and competition, how courts came to view it as monopolistic behavior, and how the antitrust doctrine against predatory pricing has been undermined by unsupported economic theory.

This can be dealt more with precedence case laws:
When the Supreme Court ruled in *Standard Oil Co. v. United States*[8] in 1911, it first denounced predatory pricing as anticompetitive behavior.

Investigative journalist Ida Tarbell spent years poring over state investigation reports and Standard Oil internal documents before the government began prosecuting the oil giant. She was able to demonstrate that Standard Oil had monopolized the market by price-fixing.Based on Tarbell's, the Bureau of Corporations', and other investigators' work, the U.S. Attorney General brought many charges against Standard Oil for violating the Sherman Act. Alleged anticompetitive behavior, such as charging less than what is necessary in more than 100 local marketplaces.The Supreme Court ruled that Standard Oil was accountable and mandated the company's dissolution into multiple smaller regional entities.

Along with the case of *American Tobacco Co. v. United State*[9]*s,*

[6] 15.U.S.C § 2.
[7] Aspen skiing co. v. aspen highlands skiing corp.,472 U.S.585,605 n.32(1985).
[8] 221,U.S.1,78(1911).
[9] 221,U.S. 106(1911).

The Standard Oil ruling established the federal government in the same year. precedent stating that antitrust legislation is violated by aggressive pricing. Predatory pricing violates Section Two of the Sherman Act because, on its face, it is not an efficient form of competition when a dominant corporation use below-cost pricing to monopolize—or seek to monopolize—a relevant market.In fact, inefficiencies occur in both phases of a predatory pricing scheme: predatory pricing is not efficient. In the predation phase, below-cost pricing encourages customers to buy excessively large and inefficient quantities of the product, diverting inputs from more advantageous use.Overconsumption like this results in deadweight loss.

In the case of *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp*[10]., the Supreme Court acknowledged that "some inefficient substitution toward the product being sold at less than its cost may be encouraged by succesful predatory pricing. Long-term inefficiencies may result from customers' purchase plans being distorted by these erroneous market signals. Below-cost pricing not only results in allocative inefficiency but also wastes public resources by forcing competitors to incur huge losses in defense costs or expensive market exits in favor of other businesses. As a result, both consumers and producers experience inefficiencies during the predation period. Because of its monopoly price, the predatory business reduces output and consumption below ideal levels during the recoupment phase, resulting in inefficiency. Theoretically, more businesses may enter the market, increase output, and lower the price. However, in practice, effective Competitors are driven out of the market when a predatory firm uses the threat of future under cuttingas a barrier to entry. In addition to the disadvantages of displaced competitors, all consumers are harmed by monopoly pricing, especially those. Who did not buyduring the predatory phase and therefore never benefited from the previous lower price. The inefficiencies and disadvantages caused by monopolization through under pricing make the strategy illegal under competition law. For decades, predatory pricing was a well-recognized antitrust claim that plaintiffs were often successful in proving.

CURRENT EVENTS:

- Vodafone accuses Jio and Airtel of predatory pricing with unlimited 5G offers
- India's shipping ministry proposes restrictions on port tariffs to prevent predatory pricing by public-private-partnership ports

[10] 509 U.S. at 224.

- India retailers request government to ban e-pharmacies to prevent predatory pricing
- Indonesia bans ecommerce sales on social media platforms to prevent predatory pricing
- India e-commerce regulation needed to prevent predatory pricing.

A Famous case law that made me to choose this topic is:

Uber India system Pvt. Ltd. V. CCI[11].,

- Ola (a Indian ride-hailing company) filed a complaint with the Competition Commission of India (CCI) against Uber (a global ride-hailing company) alleging predatory pricing.
- Ola claimed that Uber was offering services at below-cost prices to gain market share and drive out competition.
- CCI investigated and found that Uber was indeed pricing its services below cost, but did not find evidence of predatory pricing.
- CCI concluded that Uber's pricing strategy was aimed at gaining market share, but was not intended to eliminate competition.
- The case highlighted the challenges of determining predatory pricing in the dynamic and competitive ride-hailing market.

The Competition Commission of India (CCI) found no evidence of predatory pricing by Uber for the following reasons:

1. No dominance: Uber did not have a dominant position in the market, as Ola had a significant market share and other players were also present.
2. Competitive market: The ride-hailing market in India was highly competitive, with multiple players and frequent price changes.
3. No evidence of below-cost pricing: CCI found that Uber's prices were not consistently below its costs, and its pricing strategy was aimed at gaining market share, not eliminating competition.
4. Efficiency defenses: Uber demonstrated that its prices were a result of efficiency gains and innovation, such as its ability to match drivers with riders more efficiently.

[11] 641 sc 2017.

5. Lack of intent: CCI did not find any evidence that Uber's pricing strategy was intended to harm competition or drive out rivals.

Based on these factors, CCI concluded that Uber's pricing strategy was not predatory and did not violate competition laws in India Thus, here the court had interpreted sec.4(b) in such way without intention to drive out the competitors, selling for lower price does not amount to predatory pricing.

SUGGETIONS:

Predatory pricing is generally considered harmful or "bad" for the following reasons:

1. It can lead to monopolies, reducing competition and innovation.
2. It can harm consumers in the long run, as prices may increase once competition is eliminated.
3. It can stifle innovation and progress in an industry.
4. It can lead to reduced choice and quality for consumers.

Some possible measures include:

1. Price regulation: Setting price caps or floors to prevent excessive price increases.
2. Antitrust laws: Enforcing laws to prevent monopolies and promote competition.
3. Consumer protection laws: Protecting consumers from unfair business practices.
4. Industry regulation: Regulating specific industries to prevent predatory pricing practices. Thus from the above article it is evident that predatory pricing leads to monopoly.

CONCLUSION:

"In conclusion, predatory pricing remains a contentious issue in the business world, with far-reaching implications for competition, innovation, and consumer welfare. As the Ola vs Uber case demonstrates, regulatory bodies must remain vigilant in detecting and preventing abuses of market power. By promoting competitive markets and enforcing antitrust laws, we can ensure that businesses compete on the merits, innovation thrives, and consumers reap the benefits. Ultimately, striking a balance between competition and regulation is crucial for fostering a dynamic and equitable market economy that benefits all stakeholders."