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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated 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

HOW DOES PREDATORY PRICING AFFECT THE COMPETITION OF THE MARKET AND PREDATORY PRICING OF RELIANCE JIO?

AUTHORED BY - MANOJ N PUROHIT

In case a person with a huge capital enters into the market and starts selling goods for a very low price then the other sellers in the market shall be forced to exit because of the increase in monopoly by the new seller. The new seller shall initially bare the losses but once he has gained the monopoly position in the market, he shall enjoy huge amount of profit and control the market. It is also called as abuse of dominant position. A person who has already gained a fame in the market controls the market with the goodwill which shall indirectly affect the competition of the market. This article talks about the pricing of goods and misuse of dominant position and how the “Competition Commission of India” limits the pricing of goods. Further more it discusses about how the “competition commission of India” revitalize the Indian Telecom Sector with the help of predatory pricing case against reliance Jio.

Key words: Monopoly, control the market, abuse of dominant position, pricing of goods, pricing of goods.

INTRODUCTION

Competition means that a seller works hard in order to buy a buyer’s patronage and to sustain in the market with the other competitors and also maximize his profits. A buyer always tries to buy a product or hire a service at the lowest price available with a decent quality but a seller always tries to sell is product at the most profitable price in order to maximize his profit. Sellers use various methods to achieve buyers’ patronage. One of such way is pricing of goods. Sellers price the goods at such a low price that other competitors shall not be able to compete with the price and will be forced to exit from the market. This is called as “predatory pricing”. Thus “predatory price” is understood as selling of products or amenities below the floor price as set by regulation with an intention of reducing the competition or eliminating the competitors out of the market.¹

¹ Competition Act 2002, s 4(b)

Competition is considered as one of an efficient way to make sure that the end-users are exposed to wide range of products and amenities at the basic price which is available. Enterprises will have the urge to innovate, sell cost effective goods and meet consumers demand and achieve consumer satisfaction. Competition thus increases the quality of goods and services and the efficiency of the goods as well as services. But in order to achieve this market conditions must be competitive and governments all around the world are struggling hard in order to remove deformity in the market through appropriate regulations and to promote competition. One such regulation is “Section 4(b) of the Competition act 2002”, which speaks about predatory pricing.

COMPETITION KILLS COMPETITION

However, in the existing world, each and every person tries to overthrow their competitors for survival in the market and for expansion. In this process every enterprise shall make sure it stands unique by using smart techniques to do so. Sometimes they even tend to eliminate competitors. This can be highlighted as COMPETITION KILLS COMPETITION². There are various ways to do so and one of such way is predatory pricing which helps to kill the competition in the market.

ABUSE OF DOMINANT POSITION

Dominant position means a position that is condescending than others. It is always appreciable to be in the dominant position and not considered disagreeable. But abusing such dominant position or the superiority is considered as a wrongful act. The “Competition Act 2002: defines “dominant position” means a place in which an enterprise enjoys its strength in the market which enables the firms to work without any dependency of any competition that may be persuading in the market or which shall affect other enterprises or end users in marker and has the market in its favour under all circumstances.³

The competition act prevents the firms from doing so. Predatory pricing is of the way of abusing dominant position. The elements of “abuse of dominant position” are the strength enjoyed by the enterprise which operates independently of competition preceding in the market and affecting other enterprises or end-users or market in its favour.

² CA Namratha Rodrigues, Economic Business and Commercial Laws (Yeshas Academy) 57

³ “Competition Act 2002, s 4(a)(1)”

CONDITIONS PRECEDENT TO BRING A CASE WITH AMBIT OF PREDATORY PRICING

- I. Vending goods or facilitating of services which is below the floor price mentioned.
- II. This is done to make sure other enterprises are thrown out of the market and the competition is reduced.

The “Competition Commission of India” has been authorized to decide whether any enterprise or firms abuses the “dominant position” or not in the pertinent market by “predatory pricing” of goods and also to decide if it is in the “dominant position” or not. It may be noted that “predatory pricing” should not be frowned upon unless the firm abuses it while in the dominant position.

PHASES OF PREDATORY PRICING

There are two main phases that exists in the clock of predatory pricing.⁴ The first is sacrifice phase. In this phase the firm incurs losses. It tries to sell the product as low as possible. It sells the product with good quality and with the lowest price. It tries to keep the price so low where no firm has ever sold the product at such a low price. Here it sacrifices all the profits and the firm incurs huge amount of loss. The firm considers it to be a marketing strategy and utilization of capital for marketing just like advertisement expenses or marketing expenses.

The second phase is the recovery phase. Once the firm makes sure that all the competitors are thrown out of the market it starts increasing the prices. It recovers all its losses or expenses that was incurred in the first phase. The firm makes sure that it has achieved monopoly in the market and there are no powerful competitors are left in the market before increasing the prices in the recovery phase.

LEGALITY OF PREDATORY PRICING

Predatory pricing is illegal but is very difficult to prove.⁵ Predatory pricing violates antitrust laws. The laws intend to make sure there is a fair competition in the market. Just by lowering the price it doesn't prove to be predatory pricing. There are various other reasons for which the prices of

⁴ Mr. Ricky Chopra ‘Predatory Pricing and its Legal Regime in India’ (Ricky Chopra International Counsels, July 10th 2021) < <https://rcic.in/uncategorized/predatory-pricing-and-its-legal-regime-in-india/> > accessed 04th January 2023

⁵ WILL KINTON “Predatory pricing: Definition, Example and why it’s Used” (Investopedia, December 24th 2022) < <https://www.investopedia.com/terms/p/predatory-pricing.asp> > accessed 04th January 2023

the goods can be lowered. In order to prove that lowering of the price is violating section 4 of competition act, 2002 it has to be proved in the court of law that the lowering of price was done in order to cause “appreciable adverse effect” on the competition of the market. The firm should be proved guilty that it just did not intend to compete but intended to eliminate the competition.

EFFECTS OF PREDATORY PRICING ON THE MARKET

Competition is considered as one of an efficient way to make sure that the end-users are exposed to wide range of products and amenities at the basic price which is available. Enterprises will have the urge to innovate, sell cost effective goods and meet consumers demand and achieve consumer satisfaction. Competition thus increases the quality of goods and services and the efficiency of the goods as well as services. Competition thus increases the quality of goods and services and the efficiency of the goods as well as services. But in order to achieve this market conditions must be competitive and governments all around the world are struggling hard in order to remove deformity in the market through appropriate regulations and to promote competition. In case they fail to do so then the predatory pricing shall have the following effects on the market.⁶

- i. There shall be no competition in the market.
- ii. Monopoly shall prevail
- iii. Enterprises shall neglect technological development
- iv. There shall be no efforts of cost reduction by the enterprises in the market
- v. There shall be no innovation in the market
- vi. Consumers shall give up their patronage
- vii. High prices shall be charged by the enterprises
- viii. It shall jeopardize the freedom of trade carried on by the competitors in the market

⁶ Shivali Anand “Why lack of competition maybe the worst thing for new startups” (Escalon and done, May 4th 2021) < <https://escalon.services/blog/why-a-lack-of-competition-may-be-the-worst-thing-for-new-startups/> > accessed 05th January 2022

PREDATORY PRICING OF RELIANCE JIO

Reliance jio entered Telcom sector on September 5th 2016. The regulation of telecommunications in India is carried out by telecom regulatory authority in India (TRAI).⁷ It shall ensure that there shall be fair competition in the telecommunication sector and there shall not be any appreciable adverse effect the on competition of telecommunication sector.

Bharti Airtel Ltd. had presented a case against Reliance that the holding company i.e. Jio practiced a strategy which was anti-competitive and had caused “appreciable adverse effect” on the competition of the market. This allegation was made as Reliance Jio had free services from September 5th 2016 which amounted to predatory pricing. Airtel had also alleged that the free services that were rendered by reliance Jio was amounting to the abuse of dominant position of Reliance group. It alleged that reliance was indulging with “predatory pricing” with free services to eliminate competition in the telecom market.⁸

CONSIDERATIONS OF RELIANCE BEHAVIOUR AS PREDATORY

- i. It gained 4G spectrum in 2010 and by the rules of the government that were changed retrospectively. It enabled Jio to provide both voice calls and data on the same diapason.
- ii. The data centric works on 4G mobile handset. It thus ends up consumer to pay more for Jio services for free voice calling.
- iii. Initially free service was for a trial period till December 30, 2016. But they kept on increasing the deadlines until they introduced the Jio Prime.
- iv. This affected the competition of the market as the other service providers of telecom industries were not able to compete with the free services which was provided by the Jio.⁹

⁷ Telecom Regulatory Authority of India, Market structure/Competition in cable TV services (New Delhi India 7th September 2022) Ch 2 MONOPOLY/MARKET DOMINANCE/COMPETITION ISSUES IN THE CABLE TV INDUSTRIES para 2.1

⁸ Kiran Rathee & Veena Mani ‘ CCI rejects Airtel’s predatory pricing case against Reliance Jio (Business Standards, June 10th, 2017) < https://www.business-standard.com/article/companies/cci-rejects-airtel-s-predatory-pricing-case-against-reliance-jio-11706100051_1.html > accessed 05th January 2023

⁹ Pavankalyan ‘How Reliance Jio proved that free services by it were not Anti-Competitive (Complinty, 17th July 202) < <https://taxguru.in/corporate-law/reliance-jio-proved-free-services-anti-competitive.html> > accessed 05th January 2023

DEFENCE TAKEN BY RELIANCE JIO

Jio presented its latest annual report of Airtel before the Competition Commission of India which stated that it did not differentiate any service which were provided by it in the telecom sector.

Mere funding by the host company for the purpose of expansion by the new sector entry into the market can not be termed as penetration.

Just because it had the funding from the company which had dominant position in the market which was reliance it wouldn't amount to jio having "dominant position" in the market as it was a new entrant into the telecom sector.

Existing competitors had given sufficient choice for customers to shift from one service provider to another without any material cost of switching.¹⁰

DECISSION BY THE "COMPETITION COMMISSION OF INDIA"

"Competition Commission of India" rejected all the allegation of Bharti Airtel, it stated that "...in the absence of any dominant position enjoyed by Jio in the relevant market, the question of alleged abuse dose not arise..."¹¹

The CCI stated that just by providing free services in the market does not amount to be anti-competitive in nature. For Reliance to be guilty of "predatory pricing", it must be in a dominant position as per section 4 of the Competition Act 2002. Since Jio was a new entrant in the Telecom market it can not be said that Reliance Jio was in a "Dominant Position" and can not be held guilty of "predatory pricing". Even though it had a negative effect on old operators and it did nit have a suitable business model to sustain lower tariffs for a very long period of time the accused was not in the "Dominant Position" and cannot be held guilty.

¹⁰ Mint "Airtel accuses reliance jio of predatory pricing as telecom meet ministerial group" (Mint, 16th June 2017) < <https://www.livemint.com/Industry/NypkgnFycyS4ODSngZHSYJ/Airtel-accuses-Reliance-Jio-of-predatory-pricing-as-telcos-m.html> > Accessed 05th January 2023

¹¹ Suryansh Singh "The Predatory Pricing Case Against Reliance Jio: Did CCI Miss An Opportunity to Rejuvenate Indian Telecom Sector? (CCLE Competition for Good) < <https://www.icle.in/resource/the-predatory-pricing-case-against-reliance-jio-did-cci-miss-an-opportunity-to-rejuvenate-indian-telecom-sector/> > Accessed 05th January 2023

CONCLUSION

Competition is the most essential thing in the market to protect the consumer interest. It helps consumers from not being exploited. As long as there is competition in market sellers struggle hard for buyers' patronage. They use innovative techniques and more options shall be available for the consumers. Techniques like predatory pricing would cause appreciable adverse effect on the competition of the market. The essentials like "Abuse of Dominant Position" must be present in order to prove that the strategy used results predatory pricing and shall contravene section 4 of the Competition Act of 2002. Thus, predatory pricing is considered to be illegal and shall increase the monopoly of the market which leads to high concentration of the competitors and there shall be homogeneity of products with high dependency of consumers on a single enterprise which is not good for the market.