

## Predatory Pricing under Competition Law

K. Savitha

### Abstract

Going-after to attack pricing puts forward a question for which decision is hard that has troubled and made secret designs the antitrust group for many years. On the one hand, history and of money and goods theory do teaching to that going-after to attack pricing can be an instrument of bad language, but on the other side, price copies of smaller size are the mark of competition, and the clear-cut help that users perhaps most desire from the of money and goods system. As the name suggests, going-after to attack pricing is the experience pricing of goods or services at such a low level that other firms cannot make an attempt to be placed over others and are forced to let go of the market. Thought this experience was mostly used by the government agencies to put a check on the unlawful activities and control monopolies of the offices, it act as a redressal apparatus rather than a sign of danger to the Equality 1 and state of being free as promised under the law. The Competition Act, 2002 outlaws going-after to attack pricing, giving attention to it as a wrongly use of chief position, stopped under Section 4. going-after to attack pricing under the Act means the exchange of goods for money of goods or statement in law of arms, at a price which is below the price, as may be worked out by rules, of producing of the goods or statement in law of arms, with a view to get changed to other form competition or put out waste (from body) the competitors. going-after to attack pricing is pricing one's goods below the producing price, so that the other players in the market, who are not chief, cannot take part in competition with the price of the chief player and will have to let go of the market. The CCI in Re: Johnson And Johnson Ltd. said that "the liquid with special merits of predatory pricing is below one's price with a view to taking away one being in competition against."

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### Introduction

#### *Part of Competitors in Going-After to Attack Pricing*

When a single thing in the market gets up almost

suddenly, at a blow, it is mostly because of the attacks on of chief position and going-after to attack pricing which comes after. These 2 principles are seen to twist together to form a bridge between lawful and of money and goods division lines, and partly cover over the currently in existence players in the market. Such activities are basically found



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to be against the law, however it is just one of the many most frequently used ways in which that undertaking or group may attacks on its position of control. Going-after to attack pricing is mostly dependent upon the use misuse of chief position. As per the Section 42) of the Competition Act, 2002 chief position has been described as: "CHIEF POSITION" means a position of strength, got pleasure out of by an undertaking, in the on the point market, in Bohemia, which enables it to-

- i. Do medical operation not dependently of in competition forces ruling in the on the point market; or
- ii. Act on its users or competitors or the on the point market in its way;

For a thing to get to a chief, it is important that the thing has control and has the power over to act on the on the point part of market to the make right harmony of 50 per cent or more, on condition that the other one being in competition against players keep a much less part in the active market. Thought the of money and goods strength of the thing does play a full of force part, however conditions like the existence of other players in the on the point section of the industry market plays an important part in making certain whether the thing is able of putting to use a chief position.

Michael E. Porter of the Harvard Business School got greater, stronger, more complete an observations of the name Porter's 5 forces, which shows that the five conditions said-about below are necessary condition to let see attacks on of control:

- The making argument over price power of customers (ones getting things for money)
- The sign of danger of the Entry of new competitors
- The making argument over price power of suppliers
- The sign of danger of use for another products or services
- The in number of in competition competition feelings

In Hoffmann La Roche & Co. Ag v Commission of the European groups of persons the idea of 'attacks on of chief position' has been formed as:

"The idea of attacks on is an end idea having a relation with to the behaviour of an undertaking in a chief position which is such as to power over the structure of a market where, as an outcome of the very existence of the undertaking in question, the degree of competition is made more feeble

and which, through use of two methods different from those which condition normal competition in products or services on the base of the bits of business of advertisement operators, a, has the effect of slowing down the support of the degree of competition still currently in existence in the market or the growth of that competition."

Though it has been done over again done again and again, but being in a chief is not against the law short, to the point. further, "wrongly use" is an end word and it having among its parts every guide which might against act on the structure of a market in which competition is made more feeble. For this reason, the being on a thing in a business in a chief position is not against the law but the wrong use of such chief position is against the law. The position of the company has also been put down in Section 2 of the Sherman Act, 1860 and under Art 82 of the EC Competition Law. going-after to attack pricing by such an undertaking which goes across enough business to be put in order as a chief player, can be one such wrongly use.

#### *Lawful Remedies Against Going-After to Attack Pricing:*

To make certain a healthy competition in the market among the players the Competition Act, 2002, has been introduced in putting in place of the (being) the only ones in a field and keep inside limits Trade experiences Act, 1969, seeks to make certain the well-being of the users. upon getting money for the danger and questions put forward by going-after to attack pricing, which mostly a clear attacks on of the 'chief position' in the market, which short, to the point is against the law; the trading of going-after to attack pricing in India, as expressed under the Competition Act, 2002, have been got use of from the English Competition Act, 1998 and the Clayton Antitrust Act, 1914. The statement in law reads as under:

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

There will be a (very mean, unfair treatment) of most in control/most common position under Sub-section (1), if a business/project,-

- a. Directly or indirectly, (forces (on people)/ causes an inconvenient situation) unfair or (treating certain groups of people unfairly)-
  - i. Condition in (instance of buying something for money) or sale of products (that are bought and sold) or service; or
  - ii. Price in (instance of buying something

for money) or sale (including (related to hunting and killing others) price) of products (that are bought and sold) or service. Explanation. For the purposes of this clause, the unfair or (treating certain groups of people unfairly) condition in (instance of buying something for money) or sale of products (that are bought and sold) or service referred to in Sub-clause

- And unfair or (treating certain groups of people unfairly) price in (instance of buying something for money) or sale of products (that are bought and sold) (including (related to hunting and killing others) price) or service referred to in sub-clause
- Hall not include such (treating certain groups of people unfairly) condition or price which may be adopted to meet the competition;

As per explanation (b) at the end of Section 4 (related to hunting and killing others) pricing refers to a practice of driving rivals out of business by selling at a price below the cost of production. Denial of market access briefly referred to in this section, if read conjunctively, is specifically prohibited under Section 4 (2) (c) of the Competition Act, 2002.

The Section 4 of the Competition Act, 2002 goes along with/matches up to Clause 4 of the Notes in clauses of the Competition Bill, 2001 which reads as follows:

This clause prohibits (very mean, unfair treatment) of most in control/most common position by any business/project. Such (very mean, unfair treatment) of most in control/most common position, *bury alia*, includes (something forced on people/an inconvenient situation), either directly or indirectly, or unfair or (treating certain groups of people unfairly) (instance of buying something for money) or selling prices or conditions, including (related to hunting and killing others) prices of products (that are bought and sold) or services, doing/participating in practices resulting (refusing to deal with something) of market access, making the end of/final opinion of contracts subject to acceptance by other parties or added/more/helping responsibilities/duties and using most in control/most common position in one market to enter into or protect other market.

However, in 2007, Section 4 of the Competition Act, 2002 was changed/added to the end by the Competition (Change) Act, 2007. The objects and reasons of such change were given in the Notes on clauses of the Competition (Change) Bill, 2007 which says that: This clause tries to update

Section 4 of the Competition Act, 2002 relating to (very mean, unfair treatment) of most in control/most common position. The existing (legal rules) of Section 4 apply only to a business/project and not to the group of businesses/projects. Clause (c) Sub-section (2) of Section 4 states that there will be a (very mean, unfair treatment) of most in control/most common position if a business/project does practice or practices resulting (refusing to deal with something) of market access.

### Case Study

The Indian Telecom in the past 6 months has seen a very upset confusion, which was caused by a new (a person who enters or begins something) in the telecom market by the name of "Jio", a product of the group of companies of Reliance Group of Businesses. The services under the offer which was first launched as an "employee-only" offer (i.e. Unlimited Calling for life and Unlimited Data Benefit) were made open to the general public which this resulted in the huge amount and sudden rush of the masses to get/help the proposed benefits. From what was already (described a possible future event) not only did the move trigger large amount of customers, but also carefully-taught the fightings with a sense of strong (and scary) competition. This further resulted in multifold reduction in the prices of the services of all other leading service providers which then painted this riot of competition as an act of (on purpose) (carefully planned destruction of, or harmful interference with, something important). Though the legal statements (that someone has done something bad) can't be thrown out as foul cry, but the person (who uses a product or service) centric market has welcomed the new (a person who enters or begins something) and the competition with open hands which further makes it hard for others to form a basis of competition. (related to hunting and killing others) pricing as the name suggests is the pricing of products (that are bought and sold) or services at such a low level that other firms cannot compete and are forced to leave the market. Thought this practice was mostly used by the government (services businesses/government units) to put a check on the illegal activities and control (companies with too much power) of the (services businesses/government units), it acted as a (correct or make up for things that happened in the past that were mean or unfair) al (machine/method/way) rather than a threat to the (state where all things are equal) and freedom as promised under the law.

### *Whether Case Study Fits into the Definition of Predatory Pricing*

Concentration of the power has time and again been proven to be the least effective fix (for a disease) to prevent it from falling into the hands of the undeserving. In a picture/situation where development and business (process of people making, selling, and buying things) form two different sides of the coin, money always changes the equation and the result goes for a toss. (even though there is the existence of) repeated denials by the Reliance Group of Businesses about the "(related to hunting and killing others) Pricing" & being a most in control/most common player in the market, the group of companies has surely affected the Indian telecom part/area and the major players, left right and centre; it would be worth waiting to understand the course of events which follow. However now given the respected and liked/respected reputation and the sky rocketing user base, joined/connected with throw away prices breaking the market ((caused unfair, pre-decided bad opinions within) mental picture) of telecom part/area.

### *Legal Precedents*

The most valuable (instance of watching, noticing, or making a statement) relating to (related to hunting and killing others) pricing and (very mean, unfair treatment) of control was made by Lord Denning, M.R. in Registrar of (serving to severely limit or control) Trading Agreements v. W.H Smith & Son Ltd., while construing the English Law in (serving to severely limit or control) Trade Practices Act, 1965 that there was a time when traders used to join hands, and combine, to keep the trade all for themselves, so that prices can be decided according to them, because of the (one company that controls too much). This also lead to the shutting down of all new (people to enter or begin something) who might cut prices or even produce and sell better quality products (that are bought and sold). Therefore, the Parliament had to step in, both for the benefit of the new (people to enter or begin something) and the people (who use a product or service), and had to hold these trade practices void unless they were done in the interest of public interests. Therefore, the law made any such agreement void and also asked the traders to get all their trade practices registered. However, Lord Denning watches/ states/ celebrates/ obeys that the traders who combined did not tell the law about it, and it was done in dark; without the law or the people (who use a product or service)

knowing about it. Neither putting such agreement in writing, nor words were needed/demanded, "a wink or a nod was enough" for them to combine and turn the whole market into an (one company that controls too much) and control everything in it. Therefore, the Parliament came up with another law to get rid of these practices, and so, it included not only agreements but also arrangements to keep the (related to hunting and killing others) pricing in control. This (instance of watching, noticing, or making a statement) by Lord Denning was well discussed when Parliament of India changed/ added to the end Section 4 of the Competition Act, 2002 by the Competition (Change) Act, 2007 and is also reflected in the change.

In MCX Stock Exchange Ltd v. National Stock Exchange of India Ltd., DotEx International Ltd. and Omnesys Technologies Pvt. Ltd, the CCI while laying down the test for (related to hunting and killing others) pricing said that:

"before a (related to hunting and killing others) pricing violation is found, it must be (showed/ shown or proved) that there has been a clearly stated/particular (number of times something happens) of under-pricing and that the big plan/layout/dishonest plan of (related to hunting and killing others) pricing makes money-based sense. The size of Person (who is being sued or who was sued)'s (out of all the people who buy a product (like a car), how many people buy it from a particular company) and the (popular thing/general way things are going) may be (clearly connected or related) in deciding/figuring out the ease with which he may drive out a competitor through accused (of a crime) (related to hunting and killing others) dishonest pricing plan-but it does not, standing alone, allow a thought (made beforehand) that this can happen. To (accomplish or gain with effort) the recovering (a money-based loss) needed thing of a (related to hunting and killing others) pricing claim, a claimant must meet a two-prong test: first, a claimant must (show or prove) that the big plan/layout/dishonest plan could actually drive the competitor out of the market; second, there must be (event (s) or object (s) that prove something) that the surviving monopolist could then raise prices to people long enough to recover his costs without drawing new (people to enter or begin something) to the market."

### **Conclusion**

Market has always been a person (who uses a product or service) centric business model which

captures and controls the (possible power or ability within/possibility of) the players in a fair and healthy competitive (surrounding conditions). Among many other challenges present, the most important is to permanently end the system of concentration of power. As extremely important it is for the person (who uses a product or service) to get the value for money for the products (that are bought and sold) they want, it is equally important that the companies have a fair playing ground to establish themselves as a reliable and (deserving people's trust because of honesty, etc.) thing/business. While all the competitors in the market have (many different kinds of people or things) backgrounds and money-based (mixes of stocks, bonds, etc./document collections), it should be understood that ways of thinking/basic truths/rules of fairness apply to each of them individually. (related to hunting and killing others) Pricing may sometimes be put into use and thought about/believed as a check by the Govt (services businesses/government units) to rule out illegal market things/businesses or business practices. Interestingly given the developing affairs of the Indian (process of people making, selling, and buying things) the market is often able to be hurt by new (people to enter or begin something) who struggle to establish themselves, however the same doesn't seem to be the case with "Jio" a part of the group of companies of the Reliance Group of Businesses. Thought what

may have been appearing as an act of (related to hunting and killing others) pricing, as has been (charged with a crime) by the other major players in the (clearly connected or related) market part/area, it will be interesting to watch what the course of actions which further go on in the parts/areas of (related to sending and receiving phone calls, texts, etc.) in India.

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