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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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INADEQUACIES IN APPLICATION OF PREDATORY PRICING MECHANISM OVER INDIAN E-COMMERCE INDUSTRY¹

AUTHORED BY - ISHITA RAJ & DR. PRABHPREET SINGH
Christ (Deemed to be) University, Pune Lavasa Campus

ABSTRACT

The e-commerce sector of India has undergone rapid growth in recent decades which has brought fresh dynamics into the market and challenges related to competition. Amongst all such challenges, predatory pricing has become one of the major issues due to the practices of major e-commerce companies that attempted to deliberately reduce the prices of products to unsustainable levels with the motive to evict competitors from the market. Although the Competition Act, 2002 offers a legal framework to deal with the issue of predatory pricing, enforcement in the industry which is in a digital sphere remains an uphill battle since challenges such as establishing market dominance, defining cost structures of dynamic pricing and proving anti-competitive intent is not provided in the Act nor there has been any attempt by the statutory authorities. Till date, no e-commerce company has been held liable for predatory pricing in India despite growing worries over deep discounting, exclusive tie-backs, and preferential seller treatment.

The current research paper proposes to critically evaluate the adequacy of India's competition law for dealing with e-commerce predatory pricing. It shall analyse the existing regulatory setup, provisions related to predatory pricing, and issues in enforcing those provisions in the digital economy that the CCI has been grappling with. Moreover, the paper shall discuss interpretative and enforcement challenges, for instance, dominance requirement and problems in determining the costs, plaguing effective implementation. It will also discuss new policy suggestions and their possible effect on preventing predatory pricing and ensuring fair competition. The article examines notable case laws of e-commerce industry to demonstrate practical shortcomings and inadequacies in the existing law. Finally, this study hopes to

¹ Ishita Raj, student at Christ (Deemed to be) University, Pune Lavasa Campus & Dr. Prabhpreet Singh, Assistant Professor at Christ (Deemed to be) University, Pune Lavasa Campus

contribute toward better understanding e-commerce predatory pricing complexities and the policy discourse over how best to regulate anti-competitive conduct in the digital marketplace.

KEYWORDS

Predatory pricing, Competition, E-commerce, Dominant, Market

INTRODUCTION

The application of predatory pricing under Indian competition law remains in its nascent stage due to multiple factors such as new legal framework, no ample number of case laws and unclear definition of predatory pricing with enforcement agencies like the Competition Commission of India (CCI) adopting a cautious and incremental approach. Although predatory pricing is explicitly recognised as a practice under abuse of dominance provided under Section 4(2)(a)(ii) of the Competition Act, 2002, its practical enforcement has been hampered by the difficulty of demonstrating both pricing below cost and the intention to eliminate competition. In the context of digital and multifaceted markets, where services are commonly offered for free, subsidised, or monetised rates using non-price methods like data, this challenge has made it worse.

Furthermore, the cases are often dismissed at the preliminary stage primarily because they were unable to establish dominance, demonstrating the lack of consistent precedents in this area in Indian jurisprudence. The regulatory framework is still developing, as evidenced by the lack of sector-specific guidance on pricing strategies in dynamic digital markets, strict cost benchmarks, and challenges defining the market. Therefore, in order to effectively address exclusionary pricing practices, predatory pricing enforcement in India is still in its early, exploratory stages and will need more advanced tools, improved methodologies, and interpretations that are sensitive to the digital market.

The fast-paced growth of e-commerce in India has transformed the retail sector providing consumers with unprecedented convenience and choice. Driven by globalisation and technological changes, e-commerce websites have brought new business models to meet changing consumer needs and counter intense competition. But this fast-paced growth has also raised issues of anti-competitive behaviour, especially predatory pricing, which risks distorting market forces and eroding fair competition. Predatory pricing, in which market leaders offer commodities or services at below-cost prices to drive out competition, is a huge challenge to both the sustainability and inclusivity of the e-commerce industry since establishing

dominance, correctly assessing costs in a dynamic pricing regime, and establishing anti-competitive intent are tall orders for the CCI, the statutory regulator under the Act. Therefore, despite the existence of legal provisions and the CCI's role, no e-commerce player has yet been made accountable for predatory pricing in India, which emphasises the intricacies and shortcomings of the prevailing regulatory system.

ANALYSIS OF CURRENT REGULATORY FRAMEWORK

The current Indian framework on predatory pricing for e-commerce market includes the following Acts: **Competition Act, 2002, FDI Policy through Press Note 2 (2018), Consumer Protection (E-Commerce) Rules, 2020 and Legal Metrology Rules** are still inadequate in proving the allegations of predatory pricing of e-commerce enterprise till date. The **Competition Act of 2002** requires evidence of both dominance and below-cost pricing with exclusionary intent. **Explanation (b) to Section 4** defines predatory pricing as sale of goods or provision of services, at a price which is below the cost with a view to reduce competition or eliminate the competitors. Such dominance is assessed by factors mentioned in **section 19(4)** such as market share, barriers to entry, size and economic power of the enterprise, dependence of consumers on enterprise, countervailing buyer power and others. The onus to establish dominance lies on the Competition Commission of India (CCI)². These requirements are challenging to meet in the e-commerce industry because market shares are constantly fluctuating, pricing structures are cross-subsidised, and dominance is not always obvious. Consequently, the majority of complaints are rejected at the threshold stage without a thorough investigation into pricing practices.

The **FDI Policy under Press Note 2 (2018)** is structurally centred on market access and ownership rather than competition, despite its goal of preventing platforms with foreign investment from influencing pricing and exercising indirect control. Despite prohibiting e-commerce corporations from controlling inventories or establishing prices, enforcement has been inconsistent, allowing platforms to exert de facto control through preferred sellers and backend agreements, allowing for below-cost pricing without being subject to direct inspection. Despite addressing consumer fairness and transparency, the **Consumer Protection (E-Commerce) Rules, 2020** do not have investigative or punitive authority and are not designed to evaluate or prohibit strategic pricing methods that harm competitors. While they help

² The Competition Act, 2002, section 19

increase consumer awareness, the **Legal Metrology (Packaged Commodities) Rules 2011**, which require the publication of product and price details, have little effect on anti-competitive pricing practices like chronic deep discounting. Even though these regulations touch on issues linked to predatory pricing, they all should ideally function in silos since no single framework can effectively capture the economic complexities or address long-term exclusionary pricing in digital commerce. This implies that there is an urgent need for concerted, competition-focused regulatory reform.

SCOPE OF COMPETITION COMMISSION OF INDIA

The Competition Commission of India (CCI) is a statutory body within the Ministry of Corporate Affairs (MCA) that is entrusted with the authority to regulate matters related to the investigation of anti-competitive agreements, abuse of dominance and combinations of mergers and acquisitions. The role of the Competition Commission is to eliminate practices which are having Appreciable Adverse Effect on the Competition. The Competition Act of 2002, **Section 4**, gives the CCI the authority to control and prevent predatory pricing, which is an abuse of a dominant position. Selling products or services below cost with the intention of driving out rivals and then raising prices to recoup losses is known as predatory pricing. The CCI evaluates whether a business has a dominant position in the relevant market (as defined by **Section 2(r)** and examined using **Sections 19(6) and 19(7)**) and whether its pricing strategy meets the twin requirements of being below cost and intended to exclude in order to remedy such behaviour. The Commission can initiate inquiries including predatory pricing by using cost benchmarks like Average Variable Cost (AVC), look into competitive harm, and use its Director General to lead an investigation under **Section 26**. The CCI is also empowered to issue cease-and-desist orders, impose penalties and provide interim relief as needed under **Sections 27 and 33**. These provisions give CCI a robust regulatory framework to prevent market abuse, but the deterrent effect of its actions is frequently limited by ineffective enforcement, lengthy litigation and challenges demonstrating predatory intent. CCI's capacity to effectively control abuse of dominance and predatory pricing may be greatly increased by fortifying investigative procedures, expediting decision-making, and boosting the deterrent effect of sanctions. Even though, there are strong provisions to address the concerns of predatory pricing, the Competition Commission of India faces strong challenges of enforceability of such rules in the e-commerce market.

CASES REVOLVING PRICING ALLEGATIONS

India's Competition Act, 2002 bars predatory pricing under **Section 4(2)(a)(ii)**, which is the practice of pricing below cost for elimination of competitors. For pricing to be considered abusive, the company should be in a dominant position in the market a position based on factors such as market share, resources, and competitive limitations. The Competition Commission of India (CCI) is responsible for enforcement of these provisions by awarding penalties or appropriate remedial measures.

MakeMyTrip

Federation of Hotel & Restaurant of India (FHRAI) is body representing hospitality industry of India, had filed a case against MakeMyTrip (MMT), Ibibo and Oravel Stays (OYO) under section 19(1)(a) along with section 3 and 4 of the Competition Act alleging anti-competitive practices including extremely high commissions, deep discounting, imposing price parity clauses and denying market access to certain hotel chains with cause title - **Federation of Hotel & Restaurant Associations of India Vs. MakeMyTrip India Pvt. Ltd. & Ors.**³. MMT was held dominant, however, the CCI limited its ruling to imposing fines on MMT on findings of maintaining room and price parity clauses, giving preferential treatment to OYO and denial of market access and instructed to modify the discriminating provisions of agreements favouring certain hotel chains⁴. The CCI though acknowledged the deep discounting concerns but ruled that MMT's pricing strategies does not constitute predatory pricing due to reasons of no establishment of dominance over Online Travel Agency (OTA) Market during the stage of investigation, no demonstration of pricing to be below-cost and no intent of eliminating competition.

Uber and Ola Investigations

a. Pricing allegations against Uber

Uber went through a series of legal proceedings filed by informants, Fast Track Call Cab Pvt. Ltd. and Meru Travel Solutions Pvt. Ltd. (tax operators). The initial case was heard before the forum of CCI under section 4 of the Act, for the allegations of offering reduced fares and hefty discounts to customers, which was filed in the name of **Meru**

³ Case No. 14 of 2019, Oct 19, 2022

⁴ PRESS RELEASE NO. 51/2022-23 Competition Commission imposes monetary and non-monetary sanctions on MakeMyTrip, GoIbibo and OYO for indulging in anti-competitive conduct, Competition Commission of India, 2022-23

Travel Solutions Pvt. Ltd. v. Uber India Systems Pvt. Ltd.⁵ The CCI here rejected complaints against Uber for lack of dominance in the relevant geographical market and the said complaints allegations against Uber for exclusivity agreements and predatory pricing cannot be proved. Such case was appealed before the National Company Law Appellate Tribunal (NCLAT) under cause title, **Meru Travel Solutions Pvt. Ltd. v. CCI and Anr.**⁶, which was heard along with the appeal against Ola. The NCLAT set aside the order of CCI instructing the Director General (DG) to conduct investigating in the pricing models. But, the Tribunal held that there was no predatory pricing and the strategies used by such dominant entities were merely to ease the customer experience. When the same case was appealed before Supreme Court by Uber with cause title of **Uber India Systems Pvt. Ltd v. Competition Commission of India and Ors**⁷ for objecting to the order of investigation, the court ruled out that such incentives offered by Uber, which in turn makes them at a loss (a form of below-cost pricing), shall make a prima facie case under section 26(1) for investigation for allegation under section 4 of abuse of dominant position⁸. However, the CCI has held that predatory pricing are not abusive in all cases and can be deemed as a valid strategy for entities to capture market share and consumer base.

b. Pricing Allegations against Ola

Ola Cabs are operated by ANI Technologies (service provider) have been accused of predatory pricing for allegedly offering lower fares and incentives to drivers distorting the competition in the market in Bengaluru and Delhi markets respectively. There were two complaints filed by taxi service providers of Bengaluru before CCI under cause titles: **Fast Track Call Cab Pvt. Ltd. v. ANI Technologies Pvt. Ltd.**⁹ and **Meru Travel Solutions Pvt. Ltd. v. ANI Technologies Pvt. Ltd.**¹⁰ Both the complainants have alleged Ola for providing substantial discounts to consumers and incentives to drivers in Bengaluru market. A common order came out ruling that Ola did not hold any dominant position in the relevant market and there were many other competitors for taxi services and therefore the complaints were dismissed. However, the DG in its

⁵ Case No. 25-28 of 2017, June 20, 2018

⁶ Competition Appeal (AT) No. 19 of 2017

⁷ 2019 (8) SCC 697, R. F. Nariman J.

⁸ Bhawna Gulati and Vipul Puri, Predation or Competition: Demystifying the Dilemma in Platform Markets, Vol. 2, CCIJOLP, 167, 182 (2021)

⁹ Case No. 6 of 2015, July 19, 2017

¹⁰ Case No. 74 of 2015, July 19, 2017

finding had pointed out that the market share of Ola has increased to 61-62% in the year 2015-2016¹¹.

The complainants appealed before NCLAT under cause titles: **Competition Appeal (AT) No. 19 of 2017 – Fast Track Call Cab Pvt. Ltd. v. Competition Commission of India & Ors. and Competition Appeal (AT) No. 20 of 2017 – Meru Travel Solutions Pvt. Ltd. v. Competition Commission of India & Ors.** challenging Ola's dominant status and thus pricing allegations. Tribunal ruled that there was no below-cost pricing performed by Ola was not an attempt to drive out competitors from market. Instead, Ola is building its reputation and consumer base in the market¹². It noted that the pricing strategy adopted by Ola was according to the market conditions and was funded by foreign investments. Furthermore, Ola hasn't charged any below-cost prices to consider itself predatory or abusive of dominant position¹³. Since the major competitor, Uber has adopted a similar practice, the Tribunal took the view that Ola was just adopting strategies to establish itself in Bengaluru's radio taxi market.

In Delhi Market, the auto-rickshaw and taxi drivers (informants) had filed a case with title - **Vilakshan Kumar Yadav vs Ani Technologies Pvt. Ltd.**¹⁴ alleging that Ola was providing incentives higher than what was collected from passengers which was in contravention to section 4 of the Act since such practices were driving existing competitors and preventing new entrants in the market, constituting abuse of dominant position. The CCI defined two separate relevant markets: (i) radio taxi services and (ii) auto-rickshaw services, both in Delhi and held that Ola was not dominant since in radio taxi market, it was facing strong competition from Uber and in auto-rickshaw market, its share was only 19.75%. Hence, it was held that Ola is not dominant and all the allegations of abuse of dominant position filed under section 26(2) of the Act, for establishing a prima facie case, were dismissed.

Zomato, Swiggy and Zepto

The All-India Consumer Products Distributors Federation (AICPDF), has filed an antitrust case

¹¹ Ibid note 10, 11

¹² Bhumika Indulia, Dominant Position and Predatory Pricing or Win-Win for riders and drivers? NCLAT upholds CCI's decision, SCC Online Times, January 18, 2022 <https://www.sconline.com/blog/post/2022/01/18/dominant-position-and-predatory-pricing-or-win-win-for-riders-and-drivers/>

¹³ Aditya Bhattacharjea, Predatory Pricing in Platform Competition: Economic Theory and Indian Cases, Chapter 11, Multi-dimensional Approaches Towards New Technology, 211, 223-224 (2018)

¹⁴ Case No. 21 of 2016, August 31, 2016

before CCI for conducting investigation in the practices of these quick commerce apps – Blinkit by Zomato, Instamart by Swiggy and Zepto for their unfair pricing models such as deep discounting and predatory pricing which allegedly harm traditional retailers¹⁵. The complaint by informant AICPDF was forwarded by Department for Promotion of Industry and Internal Trade (DPIIT) to CCI¹⁶. A separate CCI investigation was found last year for breach of competition laws done by Zomato and Swiggy. Furthermore, the non-public documents prepared by CCI suggests that Zomato has entered into exclusivity contracts with partners while Swiggy has promised business growth for exclusive listings. The case is still pending and CCI has requested additional information from AICPDF to substantiate claims.

Cases against Amazon and Flipkart

a. Mohit Manglani v. Flipkart Pvt. Ltd. & Others (2015)¹⁷

This case was one of the first that imposed allegations against major four retail companies including Flipkart and Amazon. Although the primary allegations were for exclusive agreements between e-commerce platforms and specific sellers, CCI considered the complaint filed by All Delhi Computer Traders Association (ADCTA) along with this case for broad examinations of allegations of predatory pricing, exclusive agreement and abuse of dominant position by major e-commerce retail platforms. The complaint filed by ADCTA who are offline computer hardware retailers put forward the allegations of deep-discounting, preferential treatment and exclusive tie-ups against online retailers¹⁸.

The CCI considered complaints of both Mohit Manglani and ADCTA and concluded that there is no case of anti-competitive conduct under section 3 and 4 of Competition Act, since there is no evidence suggesting Appreciable Adverse Effect on Competition (AAEC) and mere existence of agreement does not prove AAEC. Furthermore, the exclusivity of agreement has not caused any barrier for entry of competitors and there

¹⁵ Reuters, Zomato, Swiggy, Zepto face India antitrust case over discounts, The Hindu, March 07, 2025 <https://www.thehindu.com/sci-tech/technology/fast-delivery-companies-zomato-swiggy-zepto-face-india-antitrust-case-over-discounts/article69301365.ece>

¹⁶ Samin Sayeda, Competition Commission seeks more info from complainant on allegations against quick commerce companies, The Economic Times, April 7, 2025 https://economictimes.indiatimes.com/tech/technology/competition-commission-seeks-more-info-from-complainant-on-allegations-against-quick-commerce-companies/articleshow/116832219.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cps

¹⁷ Case No. 80 of 2014, April 23, 2015

¹⁸ Ibid note 18

exists healthy competition in the market¹⁹. The consumers are benefitting in terms of prices and convenience. CCI dismissed the case under section 26(2) of the Competition Act, 2002 stating no prima facie case is made out.

b. All India Online Vendors Association vs Flipkart India Private Limited and another (2018)²⁰

This case included explicit allegations of predatory pricing wherein the informant engaged in wholesale trading alleged Flipkart and its related entities while other retail platforms like Amazon and Cloudtail were only taken as background narratives. The allegations were about selling goods through preferred sellers, discounted pricing and pricing favouritism with entities like WS Retail which was said to be abuse of dominant position under section 4 of the Competition Act, 2002. CCI held that Flipkart in relevant market to prove abuse of dominant position under section 4. CCI accepted the submissions of Flipkart on preferential sellers that it does impose exclusivity on sellers and such incentives are based on productivity of the sellers. Furthermore, Flipkart notified CCI that WS Retail were not a seller on Flipkart Marketplace post 2017, so the question of price favouritism does not arise with the particular enterprise. CCI did not considered any violation in relation to discounted pricing due to lack of evidence by the informant and absence of dominance requirement.

c. In Re: Delhi Vyapar Mahasangh and Flipkart Internet Private Limited and Ors.²¹

It is a landmark case against Flipkart and Amazon wherein the informant, Delhi Vyapar Mahasangh, a traders association representing small and medium enterprises had filed complaint with CCI against Amazon and Flipkart for the allegation of preferential treatment, deep discounting, exclusive tie-up with mobile phone brands and foreclosure of market access under section 3(1) and section 3(4) for anti-competitive agreements and under section 4(2)(a)(ii); 4(2)(b)(ii) and 4(2)(c) for predatory pricing, restricting market development and denial of market access respectively. CCI for the first time, order investigation into practices of these e-commerce platforms. This order was challenged in Karnataka High Court who had stayed such investigation before

¹⁹ Sucheta, Allegations of unfair business practices against five e-commerce sites, rejected, May 21, 2015, <https://www.sconline.com/blog/post/2015/05/21/allegations-of-unfair-business-practices-against-five-e-commerce-sites-rejected/>

²⁰ Case No. 20 of 2018, November 11, 2018

²¹ Case No, 40 of 2019, January 13, 2020

dismissing such petitions, allowing DG to proceed. However, there are no conclusive findings on the allegation put forward by the informant.

INTERPRETATIONAL AND LEGISLATIVE CHALLENGES

Differentiating between legitimate competitive strategies and anti-competitive price manipulation is challenging in digital platforms due to their multifaceted business models, network effects, and data-driven pricing, which set them apart from traditional markets. Under section 4 of the Competition Act, the predatory pricing can only be established if the firm is dominant in the industry. However, for industries like Flipkart and Amazon, which are multi-sided companies, establishing dominance in one sub-sector would not mean establishing the overall dominance of the enterprise. There are many interpretative complexities when it comes in analysing and establishing predatory pricing in the e-commerce industry that are discussed below as follows:

- 1. Requisite to prove Dominance** – The Competition Commission of India (CCI) tends to reject predatory pricing allegations if the company is not considered dominant and in addition to this, only abuse of dominance is considered as anti-competitive conduct. Due to the multi-seller marketplace model, which involves platforms functioning as middlemen rather than direct sellers, it is difficult to establish dominance per se in the e-commerce sector and assigning of market power to a single enterprise. As observe in the precedent of **AIOVA v. Flipkart**²², Flipkart was cleared of charges since the CCI observed competition from Amazon and Snapdeal. This points to a key lacuna: non-dominant e-commerce companies can pursue persistent below-cost pricing to capture market share, but avoid liability under existing laws.²³ Similarly, in **Federation of Hotel & Restaurant Associations of India Vs. MakeMyTrip (MMT) India Pvt. Ltd. & Ors.**²⁴, where an association of hotel industry alleged the conduct of predatory pricing in the form of offering discounts, CCI found that MMT coupled with Goibibo post-merger wasn't a big player and there is large presence of other competitors in the OTA market, it could not be held that MMT is dominant and hence abuse of dominant position was not established. Enterprises are often excused of allegations under abuse

²² Ibid note 21

²³ Non-Dominant Predatory Pricing: The CCI's Struggle to Keep Up with Modern Market Dynamics, Global Business Law Review Blog - SCCLP (Sep. 8, 2024), <https://gblrscclp.in/2024/09/08/non-dominant-predatory-pricing-the-ccis-struggle-to-keep-up-with-modern-market-dynamics/>

²⁴ Supra note 4

of dominant position due to presence of alternative competitors, even though such enterprise is having significant market power and ability to influence such market price of a product.

- 2. Inadequate cost assessment models** – The current Competition law framework lacks clarity on the defining the relevant terms and indicators to suggest market value and cost intending to affect price in the market. Since, the current cost determining factor taken by CCI is restricted to Average Variable Cost (AVC), it struggles to identify predatory pricing in complex market structures such as digital markets where pricing strategies are based on multiple factors like data-driven, internet algorithms and dynamic nature of market. Therefore, it is suggestive to introduce different kinds of cost determination whose application should be construed based on structure of the market. AVC might not be a true cost, and companies can price below the threshold without offending it. The AVC test alone does not capture the essence of long-term strategic pricing behaviour and therefore fails to identify predatory pricing where businesses are pricing above AVC but below other cost benchmarks. Businesses might operate at **long-run loss** which the current approach fails to consider. In the **Draft Determination of Cost of Production Regulations, 2025**, wherein the Competition Commission of India (CCI) recommends that AVC be used as the main criterion for detecting predatory pricing, but because different industries are complex, the CCI would be permitted to use other cost measures, depending on market conditions, like Average Total Cost (ATC), Average Avoidable Cost (AAC), and Long-Run Average Incremental Cost (LRAIC)²⁵.
- 3. Factor of intent** - E-commerce platforms frequently use aggressive pricing tactics like **flash sales** or **deep discounts** to swiftly gain market share which can make it difficult to distinguish between predatory and competitive behaviour. Since businesses may argue that they are merely reacting to pressure from the competition or looking to grow their client base, it is challenging to determine the true motivation behind such pricing strategies. Additionally, e-commerce market dynamics like platform economies, network effects, and data-driven pricing make it more difficult to identify predation. Pricing a platform low to draw users may not always be a sign of predatory behaviour;

²⁵ Supra note 9

rather, it may be a valid marketing tactic to increase user engagement and reap the rewards of devoted consumers. Therefore, such dynamic nature of e-commerce market makes it challengeable to prove intention of businesses behind such pricing strategies.

- 4. Defining Relevant Market** – It is precedent to the step of assessing dominance and abusive conduct such as predatory pricing. Such relevant market²⁶ and its bifurcation into relevant product market²⁷ and relevant geographical market²⁸ rely heavily on factors designed to be applied on traditional markets such as physical characteristics of product, customer preferences, price sensitivity and interchangeability. They have no specific directions to assess competition on e-commerce platforms. For multi-sided platforms, it is very difficult to establish a boundary due to their constant switching behaviour.

Therefore this narrow interpretation of Section 4 of the Act has resulted in a number of CCI rulings clearing various organisations accused of unfair and anti-competitive behaviour. The CCI has decided cases involving similar claims against Uber, Ola, and e-commerce sites like Amazon and Flipkart that abruptly began giving customers steep discounts. However, because they did not hold a dominant position in their respective markets, none of them were held accountable.

ENFORCEMENT CHALLENGES

The effective enforcement of the provisions against predatory pricing in Indian competition law is constrained by a number of procedural and structural issues. Although CCI identifies the potential impacts of anti-competitive behaviour, it faces challenges such institutional limitations, technology shortcomings and delays.

- 1. Investigation and procedural delays** – There is a cumbersome procedure established under Competition law wherein if prima facie allegations are found by Commission, they can order investigations which DG will conduct. However, during the investigation stage, due to the in-depth market analysis and economy evaluation required in predatory pricing cases, the prolonged investigations makes the remedy sought ineffective²⁹.

²⁶ The Competition Act, 2002, Section 2(r)

²⁷ The Competition Act, 2002, Section 2(t)

²⁸ The Competition Act, 2002, Section 2(s)

²⁹ Varun Singh, Competition in peril? Challenges faced by the CCI, Bar and Bench, 07 Sep 2024, <https://www.barandbench.com/columns/competition-in-peril-challenges-faced-by-the-cci>

Furthermore, most of the orders to investigate often get quashed due lack of evidence and CCI lacking jurisdiction which was observed in the case of **In re Delhi Vyapar Mahasangh**³⁰.

2. **Institutional Framework inadequacies** – CCI operates with limited manpower and infrastructure which hinders the progress in investigation and findings to prove anti-competitive conduct. The issue of CCI lacking jurisdiction can be resolved through coordination between institutional bodies such as tax authorities, **FDI and DPIIT, MoCA** and **MeitY** can fill in the procedural gaps by increasing efficiency in access of financial data of enterprises, scrutiny of their foreign investments, algorithm monitoring and getting insights on consumer protection. Evidence collection which is crucial in Competition law procedure would become simpler and efficient.
3. **Data driven contingencies** – E-commerce platforms use deep discounting funded by foreign investments, automated pricing algorithms, cross border data flow for which CCI is not properly equipped with and requires the expertise of institutional bodies who are well equipped with technological and technical abilities³¹. Such inadequacies result in backlogs and delayed investigations resulting in unfruitful outcomes. There is a need to increase resources, funds, trained personnels and technological tools for effective enforcement.
4. **Ineffective monetary penalties** - CCI has struggled in enforcing monetary penalties since there is no mandate of deposits for appeal, enterprises often exploit such opportunity to overturn monetary penalties and such challenge often leads to deduction in the amount of penalty initially charged with³². Therefore, a pre-deposit which is enshrined in the Competition Amendment Act of 2023 requires a pre-deposit before an appeal is considered in an effort to fortify the enforcement framework. It would also give CCI the authority to determine fines based on worldwide turnover and, if required, to apply harsher sanctions to guarantee successful deterrence.

³⁰ Supra note 22

³¹ Barkha Singh, A Comparative Doctrinal Study Of E-Commerce Platforms: Predatory Pricing And Network Effects, Vol. 9, Indian Competition Law Review, 52, 55 (2024)

³² Ibid note 30

POLICY SUGGESTIONS TO PRESENT FRAMEWORK

The current Indian framework on predatory pricing is inadequate in establishing predatory pricing performed by e-commerce entities. The primary legislation, the Competition Act, 2002, although defines predatory pricing within abuse of dominant position, it is extremely difficult to prove the requirement of dominant in the relevant market, and intent to eliminate competitors since there is no one enterprise which is dominant in any sector of e-commerce industry. The Legal Metrology (Packaged Commodities) Rules, 2011 only provides for Maximum Retail Price (MRP) and discount disclosures for transparency and does not provide any provision to ensure clarity in such price display by entities that can prevent below-cost selling. Similarly, the Consumer Protection (E-Commerce) Rules, 2020 requires platforms to disclose all information in relation to price of goods and services³³, i.e., original prices, discounted price and determination of price through algorithmic pricing wherein such pricing algorithms affect final price.

Furthermore, the **Ministry of Commerce & Industry Department of Industrial Policy & Promotion through its Press Note No. 2 (2018 Series)**³⁴ had released its FDI policy which state out regulations for governing e-commerce activities. Clause (ix) of this policy although prohibits discounting prices which directly or indirectly affects e-commerce marketplace, but there is no enforcement mechanism provided for violation caused by the enterprise and their affiliated sellers. These laws collectively lack absence of regulation relating to complexity of pricing models on e-commerce platforms. They fail to address the issues related to algorithmic pricing, cross-subsidisation, deep discounting and correct tests to prove below cost intent of such entities.

The 2023 report of the Committee on Digital Competition Law³⁵ and Draft Digital Competition Bill, 2024 points out that the existing ex-poste approach of Competition Act, 2002 is not sufficient to tackle challenges within digital market and therefore, ex-ante approach should be adopted. The Ministry of Corporate Affairs' (MCA) report also stated for establishment of **Committee on Digital Competition Law (CDCL)** to address challenges in the regulatory mechanism for digital market and need for ex-ante regulatory mechanism. Both the aforementioned documents stated above addresses about ex-ante approach and reliance on

³³ the Consumer Protection (E-Commerce) Rules, 2020, Rule 6(5)(d) and Rule 4(5)(c)

³⁵ Ministry of Corporate Affairs, 27 February 2024

European Union's Digital Markets Act (DMA). The official documents pointed out that India needs to regulate harm before it is done in the digital sphere since it is difficult the reverse the harm once it is done³⁶. Therefore, DMA is a suitable legislation since it uses gatekeeper status, i.e., entities having significant market power to analyse abusive behaviour. Therefore, such dominance test is essential to be used in India since no abuse of dominant position in relation to predatory pricing has been proved in India against any e-commerce enterprise who claims to have a significant rivalry as a defence.

Draft Determination of Cost of Production Regulations, 2025 which is in a post-consultation review stage aims to update the cost benchmark under section 4 of Competition Act, 2002. The proposed regulations suggest use of other form of costs apart from the traditional AVC depending upon the characteristics of industry. CCI can consider alternatives such as ATC, AAC or LRAIC. Such cost determination by CCI if disputed by any enterprise can go under consultation of experts for finality³⁷. Implementation of draft would be helpful in setting guidelines for cost assessments in predatory pricing cases. The draft is currently under review phase wherein CCI is evaluating feedback from stakeholders.

Lastly, the effective of CCI could be strengthened through its collaboration with other bodies such **DPIIT, MoCA, MeitY** and **tax authorities** to regulate the matters more effectively. Collaboration with DPIIT will enhance the insights and increase transparency on foreign investment patterns and preferential agreements which support below-cost pricing. Furthermore, the role of MoCA through Central Consumer Protection Authority (CCPA) to regulate and prevent misleading discounts and deceptive price disclosures through issuing guidelines, investigating complaints and imposing penalties can serve as indicators for predatory intent. Furthermore, the Committee Report on Digital Competition Law suggests strengthening of technical capacity which could be done through the support of MeitY, which can provide technical support through examination of algorithms, data-driven price discrimination and neutral treatment by intermediaries which are critical aspect to pricing strategies³⁸. Tax authorities such as Central Board of Direct Taxes (CBDT), Income Tax (IT) and Goods and Services (GST) authorities for seeking financial and transactional data of

³⁶ Ibid note 9, pg. 187

³⁷ Draft The Competition Commission of India (Determination of Cost of Production) Regulations, 2025, Section 3

³⁸ Organisation For Economic Co-Operation And Development, OECD Journal of Competition Law and Policy, Vol 5, No. 1, 3, 154 (2003)

entities. Such authorities can provide for information related to transfer pricing audits, disclosure of beneficial ownership, related-party transactions, profit and loss data and invoice insights on pricing, discounts and misuse of input tax credits which can enable in accessing pricing strategies and below-cost selling.

CONCLUSION

The challenges of combating predatory pricing in e-commerce industry of India highlights the wider shortcomings of the existing framework for competition law when it comes to dynamic, online marketplaces. Predatory pricing is recognised as an abuse of dominance under the Competition Act of 2002, but there are still many obstacles to overcome in order to put this law into practice. The challenges of defining the relevant market, demonstrating dominance, evaluating below-cost pricing in a multi-sided platform economy and proving anti-competitive intent have all frequently resulted in cases being dismissed or becoming weaker. Large platforms like Flipkart, Amazon, Uber, and Ola have mostly escaped liability under current legal interpretations, despite growing concerns about deep discounting, exclusive partnerships, and preferential treatment of sellers.

Recent developments like the Competition Amendment Act, 2023, the Draft Determination of Cost of Production Regulations, and the recommendations from CDCL have started to change the regulatory landscape. In order to address data-driven and algorithm-based pricing practices, these initiatives recommend implementing an ex-ante regulatory approach, broadening the scope of cost assessment models beyond AVC and promoting institutional cooperation. However, policy proposals alone are insufficient for effective enforcement. For true impact it is important to bolster the CCI's resources, implement technology-driven investigative tools, redefine the notion of dominance in multi-sided markets and empower sector-specific collaborations.