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Predatory Pricing vis-à-vis Dominant Entity: Highlights of the Meru-Ola Tussle

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Predatory Pricing is often described as pricing of any commodity below a suitable value for the purpose of ousting competitors in the short run and abating competition in the long run. A practice which is detrimental to both competitors and competition, the same proves to be a barrier for market growth as well. Usually, the decrement of price is targeted at increasing market share, and thus, it would not be wrong to say that Predatory Pricing creates Monopoly.

The term Predatory Pricing is complex to explain in detailed economic terms. In a layman's definition, it is forfeiting of present returns for the intention of eliminating competitors from the market with the motive of recovering lost revenues through monopoly profits afterwards.

In order to show that a seller is resorting to predatory pricing, the claimant should prove that either 1) a competitor is charging a price below his average cost in the competitive market, or 2) the competitor is charging a price below its short-run, profit-maximizing price and barriers to entry are great enough to enable the discriminator to reap the benefits of predation before new entry is possible.[1]

Moreover, it is to be noted that the prerequisites of profit maximization price is applicable only when the barriers to entry is remarkably high, For example, Entry barriers for setting-up a clothing stores is very low, hence, the prices charged for buying clothes from these stores is nearly close to the marginal cost.

Therefore, the concept of "Dominant Entity" becomes important to understand before getting apprised about the predatory pricing in India. The question of abuse, as per the Indian Courts will only arise when a market player is rendered to be a "Dominant Entity" in market. Recently, in the case of Fast Track Call Cab Pvt. Ltd. v ANI Technologies Pvt. Ltd., the Competition Commission of India clarified its stance on "Dominant Entity".

In this case, the informer(s), who were running radio taxi services, alleged that "Ola Cabs" (Respondent) had abused its dominant position in the relevant market by giving heavy discounts to the users and therefore, incentives to the cab drivers associated with them amounts to predatory pricing under Section 4(2)(a)(ii) of Indian Competition Law, 2002. The issues delved by the court were: – 1) Whether Respondent held a dominant position in the said market? 2) If Yes, Whether its act would constitute to practice of Predatory Pricing?

The Court observed that for a market player to have a dominant position in the market, it should hold its market share for a reasonable amount of time. In the instant case, the market share of Respondent waned due to entry of new market players like Uber, Taxi for Sure and thus, it cannot be said that the Respondent enjoyed dominant position in the market. In the absence of dominance of a player, the question of abuse would not arise.

The Informant also argued that through the decisions of General Court in *Astra Zeneca v Commission*[2] and *British Airways Plc. v Commission*[3], wherein it was held that reduction in the market share cannot be taken as the sole criteria of dominance of any entity, the informant also argued that the dominant position cannot be ascertained on the basis of any market player's ability to increase price, but it is also dependent on the ability of the enterprise to suppress it for a longer period of time which unfavorably affects the competition. Moreover, the informants also contended that it is not compulsory that only one entity can be dominant in a particular relevant market, as there is a likelihood of two entities asserting dominance simultaneously.

To these arguments, the Court observed that a new entrant which has a new idea, exceptional technology or a remarkable product that contests the status quo in a market and attracts a large consumer base in its favour cannot always be held as dominant. The Court examined the provisions of Section 4 of the Act, and opined that the same is restricted to dominant position held by only one enterprise or one group. In the instant case, with the presence of more than one dominant market player (like Ola or Uber); none of those entities would be able to act independently of one another.

The decision *Fast Track Call Cab Pvt. Ltd. v ANI Technologies Pvt. Ltd* has clarified the regime of predatory pricing in India to a significant extent, wherein the Court has narrowed down the contours of Dominant entity in Indian market. The Court has expressly denied labeling an entity as "Dominant Entity" just because the same possesses a novel concept or superior technological solution.

Predatory Pricing is a complicated practice of an anti-competitive behavior. The ongoing market surroundings play a vital role in ascertaining predatory pricing, i.e., entry conditions in the market, abuse of dominance, monopolization conduct, etc. Therefore, it is imperative that the legislators should be clear in their perspective and make provisions in Competition Act pertaining predatory pricing more elaborative. It will act as a boost for the fresh small market player and will also foster necessary competition and optimum welfare.

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