

Predatory Pricing: Interplay between Law and Economics

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Antitrust regulation is a domain where law and economics interact whereby economics assists in implementation of the law. Various economic theories have been developed to substantiate the need and the basis of antitrust regulation. This paper focuses on predatory pricing as an antitrust violation. When an undertaking has priced its product below cost so as to eliminate competitors, then it is guilty of predatory pricing. The traditional theory of predatory pricing was considered flawed and, therefore, economists developed detailed strategic theories. Although not all theories translate into law, they still provide a basis while deciding the cases on antitrust violation. Jurisdictions like that of the US have accepted the importance of economics in implementation of the law and thereby seek assistance from economic experts while deciding the cases. This paper, therefore, attempts to analyze the development of economic theories vis-à-vis law on predatory pricing.

I Introduction

Competition means a struggle or contention for superiority, and in the commercial world this means a striving for custom and business of people in the market place. In the UK, the Competition Commission has described competition as ‘a process of rivalry between firms ... seeking to win customers’ business over time’.¹ This drives the economy and ensures that the interests of the consumers are protected. Competition is believed to achieve efficiency including economic efficiency and thereby benefit the society. Economists today almost unanimously believe that antitrust enforcement is beneficial to both consumers and economic growth, and that it is a necessary component of any free-market economy.² To facilitate the understanding of these issues, it is useful to understand some basic concepts of micro-economics and welfare economics.³

Economic concepts like demand curves, consumer’s and producer’s surplus, elasticity of demand, cross-elasticity of demand, profit maximization, economies of scale and scope and so on assist in ascertaining the nature and scope of market, behavior of the participants as well as other stake holders and also in analyzing whether the actions of the participant are anti-competitive. For instance, “[t]he cross-elasticity of demand between two products measures the extent to which the quantity demanded of the first product will change in response to a change in the

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