

1. Title of paper:

Predatory pricing and the South African Competition Act – The role of economic analysis

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5. Abstract:

Predation (in an economic context) is a collective term for actions by or strategies of firms aimed at reducing or eliminating competition. The South African Competition Act, Act 89 of 1998 as amended has as its purpose the promotion and maintenance of competition. To this end Section 8, Abuse of dominance prohibited, prohibits the act of predation generally in subsections (c) and (d), and predatory pricing specifically in subsection (d)(iv).

Predatory pricing is a pricing policy pursued by a firm (or firms) with the express purpose of harming rival suppliers or exploiting the consumer. This definition illustrates the contentiousness of predatory pricing as the above can also be used to describe aggressive competition. The argument being that rational firms in their profit maximising behaviour set out to harm rivals and exploit consumers. However, in a competitive environment competition would be the check in the system whereby harmful actions and exploitative practices could not successfully be carried out or maintained over the long term.

Furthermore, predatory pricing is a strategic action of temporarily reducing prices to force competitors from the market in order to increase long-term profits. Players in a market can cry foul when they find that a competitor prices at levels too low for them to profitably match. Once again the low price can be a sign of vigorous competition.

In essence the problem with predatory pricing is that its symptoms lie very close to those of vigorous and healthy competition. In assessing allegations of predatory pricing it is therefore very important to analyse the situation correctly as not to harm instead of promote competition.

McGee argues that predation is rarely the most profitable strategy and therefore unlikely to occur. His argument is that competitive pricing can too easily be confused with predation. Regulating alleged predatory actions might be detrimental to competition as a whole and should therefore be avoided.

Others (Areeda and Turner; Posner, Williamson, etc) see predation as a profitable and likely strategy for firms and most countries' competition policies reflect predation as possible but unwanted actions.

This paper examines the different approaches to measuring and proving predatory pricing by first looking at rules proposed by different schools of thought on how to identify and treat predatory pricing, and secondly, looking at selected countries' legal approaches and required economic analyses to deal with predatory pricing.

Then, taking into account the Competition Act and the uniqueness of the South African competitive environment, concludes that the best way to examine allegations of predatory pricing would be a two-tier approach whereby the relevant market is first analysed to determine whether predatory pricing is indeed a potentially profitable strategy, and secondly, apply a cost measure to determine whether the pricing policy is loss making in the short run. Examining and establishing a

contravention of section 8 thus entails thorough economic analysis on both tiers of the investigation.

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