Price Predation: Legal Limits and Antitrust Considerations

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Competition centered strategies in the form of predatory pricing directed toward weakening or destroying a competitor are receiving increasing emphasis in the Courts and among antitrust theorists and policymakers. Recently, the Supreme Court found little evidence of antitrust injury extending from price predation in the case of Brooke Group v. Brown & Williamson Tobacco Corporation (1993). The author examines the current legal standard for predatory pricing and juxtaposes it against emerging insights on this competitive practice.

In marketing, competition-centered strategies, including the manipulation of price, have received increasing emphasis (cf. Weitz 1985). According to Kotler and Singh (1981, p. 30), "successful marketing ... require[s] devising competition-centered strategies, not just customer-centered and distribution-centered strategies." Faced with declining market growth, resource scarcities, and the proliferation of new technologies, companies are increasingly pursuing profit gains at the expense of their rivals through market share rather than market growth.

Strategies directed toward competitors can involve different objectives. On the one hand, a company may employ competition-centered strategies to create a "better state of peace" between rivals (Kotler and Singh 1981). Such an approach involves a business entrenching itself in some part of the market in which it has a natural and comparative advantage. This advantage discourages aggressive actions by rivals and favors peaceful coexistence. Rivalrous behavior that does occur is usually the result of one firm poorly serving its market niche, a new competitor attempting to bring new advantages to the market, or changes occurring in the environment. Strategies of this kind are welfare enhancing, because they facilitate efficient competition.

On the other hand, competitive strategies may also possess the objective of weakening or destroying a competitor (i.e., cutthroat competition). These strategies can be injurious to competition and may potentially reduce consumer welfare. Such strategies are commonly referred to as predation or predatory strategies and can involve both price and nonprice tactics (cf. Zeithaml and Zeithaml 1984). Nonprice predation involves a competitor's attempt to increase a rival's costs through such tactics as the acquisition and "sleeping on" of patents, predatory product preannouncements, useless product modifications, exclusionary market channel arrangements, disparaging advertising, and sham litigation (see Gundlach 1990). An aggressive firm may also attempt to lower a rival's profits through price predation. In this case, a firm sets its prices low enough and for a sufficient time period to disadvantage its rivals in some way (Sheffet 1994). Tactics can include sustained price cuts to below-cost levels, discriminatory pricing, and temporary price warring.

A primary objective of the antitrust laws is to distinguish competitive strategies (and more particularly, predatory strategies) that are welfare enhancing from those that reduce the welfare of consumers. The difficulty of this task is made even more complicated when predatory pricing is involved. The Supreme Court states:

[The mechanism by which a firm engages in predatory pricing—lowering prices—is the same mechanism by which a firm stimulates competition; because cutting prices in order to increase business often is the very essence of competition ...:] mistaken inferences ... are especially costly, because they chill the very conduct the antitrust laws are designed to protect (Brooke Group Ltd. v. Brown & Williamson Tobacco Corp. 1993, p. 4703).

Because of the possibility of mistaking welfare enhancing price competition and extant theory that suggests the irrationality of predatory pricing, policymakers and the Courts have long held a skeptical view of this form of (anti)competition. Their thesis is that a predator would lose so much money attempting to drive out a rival through lowering price below cost that it would never earn enough profits later to recoup its losses. The argued irrationality toward predatory pricing and resultant enforcement posture taken by the Department of Justice (DOJ) and the Federal Trade Commission (FTC) (see Rule 1988) is summarized by a former director of the Bureau of Competition: "Many argue that predation is impossible, and hence, enforcement of the antimonopolization provisions of the Sherman Act should not be based on this empty concept" (Campbell 1987, p. 1625).

This perspective also underlies key decisions of the Supreme Court, which has stated, "predatory pricing ... is by nature speculative ... [and] ... rarely tried, and even more rarely successful" (Matsushita Electric Industrial Co. v. Zenith Radio Corp. 1986, pp. 588–89).

Recently, the Supreme Court again addressed predatory pricing in Brooke Group v. Brown & Williamson Tobacco Corporation (1993). In announcing a two-part standard, the Court found little evidence of predation in a price war between two major tobacco companies. The Court's decision establishes a very difficult threshold for firms threatened by predatory pricing. Some commentators have even suggested that the impact of the case as a precedent may prove to be "fatal to all future predatory pricing claims" (Glazer 1994, p. 606).

In contrast to the Supreme Court's holding and those commentators espousing such a view, a number of theorists...
have begun to reconsider the nature and occurrence of predation as an anticompetitive practice. Among these scholars, "it is now generally agreed that the argument that predation is impossible is incorrect at least as a matter of theory" (Hay 1990, p. 913). These theorists propose numerous models of predation that rely on nonstatic notions of competition involving multiple markets, asymmetries of information, and nonprofit maximizing strategies (see Schmalensee and Willig 1989). According to this "new learning," in theory, even above-cost pricing can be employed to disadvantage equally or more efficient rivals and result in injury to consumer welfare (Hay 1990, p. 914). Of course, the desirability of adopting and implementing such an antitrust standard is questionable. (For a discussion of this issue, see, for example, Barry Wright Corp. v. ITT Grinnell Corp. 1983.)

I examine the current law and theory of predatory pricing, while emphasizing the Supreme Court's two-part standard developed in Brooke Group (1993). This standard is juxtaposed against recent advancements in industrial organization theory and marketing that describe how predatory conduct involving price may be a rational strategy for the aggressive competitor and may be employed in a variety of ways to disadvantage rivals, some of which create antitrust injury. I then discuss implications for antitrust policy development, marketing research, and the practice of marketing.

Background and Current Law

Statutory Law

Federal antitrust law attempts to control predation through Section 2 of the Sherman Act (1890), Section 2 of the Clayton Act (1914) as amended by the Robinson-Patman Act (1936), and Section 5 of the FTC Act (1914). The Sherman Act (Section 2) states:

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony....

As outlined in United States v. Grinnell Corporation (1966, pp. 570–71), monopolization requires monopoly power and conduct indicating a "willful acquisition or maintenance of that power, as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." An attempt to monopolize, alternately requires (1) specific intent to control prices or destroy competition, (2) predatory or anticompetitive conduct directed toward that end, and (3) a dangerous probability of success (Spectrum Sports, Inc. v. McQuillan 1993). Often a specific intent to monopolize is inferred from predatory conduct, which thus combines the first and second elements.

The Clayton Act (1914, Section 2), as amended, makes it unlawful for any seller to discriminate "in price between different purchases or commodities of like grade and quality ... where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce." The Act forbids exclusionary conduct of a discriminatory nature (Sullivan 1977). In the case of predatory pricing, a firm is prohibited from selling at a low price when it encounters competition and at a high price otherwise if its purpose is to drive rivals out of the market. In addition, other discriminatory practices aimed at forcing a competitor to consolidate or disciplining a rival that reduced its prices or competed with the firm are forbidden.

Section 5 of the FTC Act (1914) authorizes the Commission to challenge predatory practices deemed to be "unfair methods of competition." The Act permits (1) challenges to predatory conduct violating the Sherman and Clayton Acts and (2) transgressions of the spirit of these Acts. Besides the federal laws, many states have sales-below-cost statutes or constitutions prohibiting monopolies that can be employed to challenge predatory pricing (see Haynes 1990). Often, these statutes require evidence of below-cost pricing and a specific intent to injure a competitor. For example, in a recent well-publicized case, Wal-Mart, America's leading discounter, was found guilty of violating an Arkansas state unfair pricing statute: Its stated pricing strategy was to "meet or beat the competition without regard to cost" (American Drugs, Inc. v. Wal-Mart Stores, Inc. 1993). Courts have observed these unfair pricing laws to ease the hardships of cutthroat competition (Quinn 1990).

Federal Standards

At the Federal level, differences among the statutory language of both the Sherman and Clayton Acts has led to different standards for injury to competition and the nature of conduct considered anticompetitive. The Sherman Act condemns predatory pricing when it poses a "dangerous probability of actual monopolization" (Spectrum Sports, Inc. v. McQuillan 1993, p. 8). In contrast, the Robinson-Patman Act requires only "a reasonable possibility" of substantial injury to competition before its protections are triggered (Brooke Group 1993, p. 4702). Thus, for predatory pricing to be found anticompetitive, an actual determination of monopolization or injury to competition need not be found. Rather, only a reasonable prospect (Robinson-Patman Act) or dangerous possibility (Sherman Act) is required.

Supreme Court

Over the years, the Supreme Court has addressed predatory pricing on various occasions. These decisions suggest a narrowing of the Court's stance from relying on predatory intent derived from extensive analysis of circumstances including below-cost pricing, to relying on a more limited, but objective, below-cost price and reasonable expectation of recoupment test.

One key early decision involving intent is Utah Pie Company v. Continental Baking Company (1967). Analyzing predatory discrimination in the pie market, the Court held that, "the existence of predatory intent might bear on the likelihood of injury to competition" (Utah Pie 1967, p. 702). Such intent could be inferred from economic circumstances, such as "persistent unprofitable sales below cost and drastic price cuts" (p. 702). Little introspection regarding the basis of employing intent as an element of injury or clarity for developing a useful standard is provided, however.

With the increasing application of economic analysis in antitrust during the 1980s, predatory intent was replaced as
an element of inquiry with more objective standards. Two key decisions include Matsushita Electric Industrial Company v. Zenith Radio Corporation (1986) and Cargill v. Monfort of Colorado, Inc. (1986). In Matsushita, predatory pricing was defined as "pricing below some appropriate measure of cost" (p. 584, n. 8) and "a reasonable expectation of recovering, in the form of later monopoly profits, more than the losses suffered" (p. 524) from a predatory episode. In Cargill, a similar conclusion was reached: "Courts should not find allegations of predatory pricing credible when the alleged predator is incapable of successfully pursuing a predatory scheme" (pp. 119–20, n. 15). Together, these cases reflect the Court's movement toward adopting economic cost-price comparisons and recoupment-based analyses for addressing predatory pricing.


The Court's most recent case involves an allegation of predatory price discrimination. In 1980, Liggett pioneered the economy segment of the cigarette market through the development of a line of generic cigarettes offered at a list price 30% lower than branded cigarettes. By 1984, generics held 4% of the market, primarily at the expense of market share for branded cigarettes. Brown & Williamson, feeling the loss of share in its branded cigarette market, entered the generic market and beat Liggett's price. The ensuing price war resulted in Liggett's complaint that Brown & Williamson's strategy (volume rebates to wholesalers) amounted to below-cost pricing and an attempt to pressure Liggett to raise prices on generics, which would, thus, restrain the segment's growth and preserve Brown & Williamson's supra-competitive profits on branded cigarettes (for a more extensive discussion of this case, see Shecket 1994). In finding that predatory discrimination had not occurred, the Court articulated a two-part standard:

First, a plaintiff seeking to establish competitive injury resulting from a rival's low prices must prove that the prices complained of are below an appropriate measure of its rival's costs (p. 4702).

The second prerequisite to holding a competitor liable under the antitrust laws for charging low prices is a demonstration that the competitor had a reasonable prospect (under Robinson-Patman), or under Section 2 of the Sherman Act, a dangerous probability, of recouping its investment in below-cost prices (p. 4703).

The first prong of the standard requires that the predator's prices are below an appropriate measure of cost. According to the Court, "only below-cost prices should suffice" and "above-cost prices that are below general market levels or the costs of a firm's competitors inflict injury to competition cognizable under the antitrust laws" (p. 4702). The rationale for this requirement is that,

[a]s a general rule, the exclusionary effect of prices above a relevant measure of cost either reflects the lower cost structure of the alleged predator, and so represents competition on the merits, or is beyond the practical ability of a judicial tribunal to control without courting intolerable risks of chilling legitimate price-cutting (p. 4703).

Accepting a standard of below-cost pricing, the Court declined to resolve the appropriate cost measure to be considered. Instead, both parties agreed that the relevant measure should be average variable cost.

The standard's second part involves assessing the reasonable prospect (Robinson-Patman Act), or dangerous probability (Sherman Act) of a predatory firm recouping its investment through supracompetitive prices. A further aspect of this inquiry is determining the likelihood of injury to competition if recoupment were to occur. The Court indicated that such a determination should be similarly analyzed under both the Robinson-Patman and Sherman Acts and must include "an understanding of the extent and duration of the alleged predation, the relative financial strength of the predator and its intended victim, and their respective incentives and will" (p. 4703). With this understanding, "if market circumstances or deficiencies in proof would bar a reasonable jury from finding that the scheme alleged would likely result in sustained supracompetitive pricing, the plaintiff's case has failed" (p. 4703, emphasis added).

The market circumstances identified include markets that are highly diffused or extremely competitive, markets in which new entry is easy, or in which a defendant would be incapable of taking on additional capacity because of the exit of a rival. In short, the court indicated that the inquiry must evaluate whether "given the aggregate losses caused by the below-cost pricing, the intended target would likely succumb" (p. 4703, emphasis added) and whether the predator could benefit from the rival's surrender.

In discussing their standard, the Court observed, "[t]hese prerequisites are not easy to establish, but they are not artificial obstacles to recovery; rather they are essential components of real market injury." The Court also reiterated its assertion from Matsushita (1986) that, "predatory pricing schemes are rarely tried, and even more rarely successful" (Brook Group 1993, p. 4703). Together, the Court's comments suggest a skeptical outlook toward predatory pricing and one that arguably disfavors legal claims that rely on such conduct.

**Department of Justice and Federal Trade Commission**

Claims of predatory pricing typically originate between competitors, and thus the majority of cases involve private litigation. However, actions against predation are also within the authority of both the DOJ and FTC. In general, these agencies have adopted a similar posture to that of the Supreme Court. According to the DOJ,

It is almost always very difficult, if not impossible, to tell the difference between beneficial, efficient competition and objectionable, inefficient predation. Therefore, although we may assume that some anticompetitive strategic behavior does occur, the appropriate role of antitrust law in regulating that conduct is nevertheless very limited (Rule 1988, pp. 426-427).

The DOJ has noted that, even if violations were found, the lack of a workable remedy poses problems for pursuing predation. Any remedy requires limiting a predator's ability to compete and could result in additional concerns.

Similar to the DOJ, the FTC has taken a cautious view. When asked about the prospect of the FTC initiating a complaint for predatory pricing, Commissioner Oliver stated:
Figure 1. Predatory Pricing: Analysis of Federal Court Cases

U.S. Supreme Court, Court of Appeals and District Court (total = 787)

The Supreme Court has said, correctly we think, that predatory pricing is rarely tried and rarely successful. The complaints that we get, and we do get some complaints on it, when we investigate we discover that basically it's a competitor upset at the success that his competitor is having (Antitrust & Trade Regulation Report 1987, p. 340).

Moreover, in response to an inquiry concerning a reported 42 complaints concerning predatory pricing and only one initial phase investigation, the Director of the FTC's Bureau of Competition, Jeffrey I. Zuckerman, commented that the FTC does not "want the message to be out there that cutting your price is going to bring the government down on you" (Antitrust & Trade Regulation Report 1989, p. 127; see also Schildkraut et al. 1992). More recently, reauthorization legislation now requires the FTC to report to Congress the activities of the Commission relating to predatory pricing (Antitrust & Trade Regulation Report 1993).

Private Case Law

In contrast to the stated opinions of the Supreme Court and enforcement agencies regarding the plausibility of predatory pricing, various indices suggest a steady concern for this practice. An examination of Federal cases beginning in 1970 and extending to the present indicates a steady (if not increasing) number of cases discussing predatory pricing. Figure 1 shows a summary analysis of the frequency with which Federal cases have referenced price predation. Archival examination of written opinions of the Federal judiciary containing reference to "predatory pricing" or its derivatives was employed for this analysis.

The number of cases discussing predatory pricing across time suggests continued concern for this form of (anti)competition. Although the cases are not consistent or dispositive regarding the actual frequency of predatory pricing, these findings parallel results found by others, which suggest that concern for these practices exists on the part of attorneys (Beckenstein and Gabel 1983), corporations (Beckenstein and Gabel 1986), and states (i.e., State Attorneys Generals).

Emerging Perspectives

Current legal assessments of the antitrust effects of predatory pricing, as reflected in the Supreme Court's decision in *Brooke Group* (1993) and the sentiments expressed by both the DOJ and FTC, rely heavily on neoclassical price theory—a static model of economic behavior in which parties are assumed to possess perfect information regarding each other's behavior.

The dominant form of predation considered according to this model is of a firm pricing merchandise at below-cost levels to promote the exit of a competitor, with the intent of raising its prices after the competitor leaves the market. Although yielding insights for predation, the model's limiting assumptions restrict its inclusiveness for other forms of behavior that might be considered predatory, involve price, and possess negative implications for consumer welfare. Guided by this understanding, several theorists have recently attempted to examine the nature and plausibility of predatory pricing under less constrained circumstances than were previously assumed. In industrial organization theory, this body of growing scholarship is known as part of the new learning of industrial organization (see Schmalensee 1982). This perspective has also been investigated and advanced by marketing scholars (Heil and Langvardt 1994).

In contrast to previous focus on structure and methods of static analysis for understanding the behavior of market actors, the new learning approach emphasizes the evolving, strategic, and dynamic nature of economic behavior. It incorporates the richness of microeconomic theory with differing models of imperfect information and competition, and cooperative, as well as noncooperative, game theory to develop a range of models that characterize competitive conduct—including predatory pricing (Schmalensee and Willig 1989). Through the approach's methodologies, the concepts of purpose and intent are embedded in these models and strategy decision sets and information available to present and future market participants are identified explicitly (Ordoover and Saloner 1989).

The product of new learning is the conclusion that welfare-reducing, aggressive, and exclusionary conduct is more likely and potentially more rational than was indicated through the application of classical models of competition and monopoly. In addition, because of its methodologies this conduct is able to be more precisely characterized than through prior methods of static analysis.

For understanding predatory pricing, the new learning approach yields considerable insight pertaining to the nature and feasibility of this practice for the aggressive competitor. A variety of models that characterize predation and their welfare effects have been developed. These models go beyond suggesting that the rationality of predatory pricing is

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1 A computerized data base (WESTLAW) search of Antitrust and Trade Regulation Cases (Data base: FATR-CS) before the U.S. Supreme Court, U.S. Court of Appeals, and U.S. District Courts was conducted. Initial review of key cases involving predatory pricing aided the development of the search terms employed for the analysis. The search was conducted on December 6, 1994. Overall, 787 cases were identified. Each case was examined to ensure its proper reference.

2 Emerging, here, refers to the comparative quality of new insights regarding predatory pricing relative to extant neoclassical price theory.
lowering prices to below-cost levels and then subsequently attempting to recoup losses through monopoly profits (e.g., the current view) to embrace alternative conceptions of predation involving price.3

Indeed, many of the predatory behaviors identified in these models do not involve prices that are below marginal cost. The models only require that a predator incur lower profits, and not necessarily losses, from its predatory strategies. As Baker (1994, p. 590) notes, a firm can deter aggressive competition with a low price, even if the low price exceeds the price-cutter’s average cost, as long as the price is sufficiently lower than its rival’s costs.

Although debate may center on the desirability of establishing an above-cost standard because of the potential of false positives,4 the importance of these models is to show that predatory pricing can make excellent theoretical sense and that a criterion of below-cost pricing as an antitrust standard may not address the full range of predatory possibilities involving price. The incorporation of these models in current antitrust analysis of predation, however, remains to be seen.5

**Predatory Pricing Models**

The common perspective underlying the new learning models is their realization of the informational asymmetries present in most markets and their consideration of the dynamics of strategic behavior among actors in these markets. The presence of informational asymmetries enables a predator firm to influence the beliefs and expectations of a rival in such a way (e.g., entry, exit, setting price, determining output) that a predatory outcome results.

Because of price’s relative ease of change compared to other marketing mix variables; its ability to be fine-tuned to different regions, channels, or segments; and its ease in reversing changes, price provides one mechanism for a firm to achieve predatory outcomes (Heil and Langvardt 1994). Furthermore, the added dynamic dimension of these models takes into account the understanding that the prospect of a reputation for predatory behavior could affect other rivals in other markets and across time. These include predatory outcomes extending from signaling, signal-jamming, and reputation models.6

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3Regarding the “traditional” view of predation as a predator pricing below cost in an effort to drive out a rival, if imperfections in the market for capital cause the rival to have relatively less access to financial capital (both internally and externally) and entry barriers exist in the preyed upon market, a predator may reasonably be expected to be capable of using its “deep pockets” and greater access to capital to drive out its rival.

4A false positive diagnosis of predatory pricing occurs when a test accusses a firm of predatory pricing when in fact there is none. A false negative occurs when a test exonerates a firm engaging in predation.

5Aspects of the new learning approach have been applied across some areas of antitrust (for a review of marketing related applications, see Heil and Langvardt 1994).

6Other models that rely on experience-curve pricing and the dynamics of demand suggest that under the classic below-cost pricing model of predation, losses incurred may be recovered in ways that do not require supra-competitive pricing. The anomaly of these models shows that under particular circumstances, some classic predatory price conduct may actually be welfare enhancing. For a discussion of these models, see Handler et al. (1990). My subsequent discussion extends Milgrom and Roberts’s (1990) research.

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**Signaling Models**

The signal-based models of predatory pricing rely on a predator being better informed than its “prey” (i.e., rival) about a market or demand characteristic related to price and relevant to the prey’s market entry and output decisions. A variety of market and firm characteristics provide this potential, such as different knowledge regarding demand and market characteristics, technology, and production.

At a basic level, a firm’s costs yield an excellent illustration. This information is often private and is, thus, held asymmetrically among firms. Moreover, cost information is of considerable value to competing firms for predicting a rival’s strategy, as well as its potential response to the firm’s own strategies. In this way, competing firm’s possess significant incentives for understanding each other’s costs. Given these incentives, if a rival firm were to successfully alter the competitor’s knowledge of these costs, it stands the potential of influencing that competitor’s behavior.

One way to accomplish this outcome is through pricing strategies. Price is one observable indicator of a firm’s costs, because these variables often correlate. Setting a low (or high) price often suggests associated low (or high) costs. When a firm sets a price it would not otherwise have set (either high or low), the rival’s inferences regarding the firm’s costs may be biased. For example, if a firm sets a lower price than normal, a competitor attempting to make strategic inferences regarding the firm’s costs may bias its estimates downward.7 Inferring lower costs, the competitor may conclude the firm to be a much more efficient firm and therefore tougher competitor. This belief may alter the firm’s strategies for entering a market. Predatory outcomes can arise when these beliefs result in equally or more efficient firms altering their behavior in ways that erode consumer welfare.

Consider a hypothetical example involving a small retailer pursuing entry in a market occupied by a larger more resourceful retail rival. In an attempt to influence the small retailer’s inferences regarding the larger rival’s costs, the rival may price its products accordingly. It is not difficult to imagine a scenario in which the smaller retailer, on the basis of such conduct, concludes the larger retailer to be a more efficient rival (even if it is not) and as a result decides not to enter the market. If the smaller firm is a more efficient competitor, its deterrence from entering the market can result in reduced consumer welfare.

The prospect of informational asymmetries being thus employed is plausible when a person considers the range and circumstances in which these conditions manifest themselves. Consider, for example, the asymmetries that exist to new or recent entrants in a market, in which firms adopt new technologies, open production facilities, change management/ownership, and incur changing market conditions. Informational asymmetries may exist simply by virtue of market research, multiple market circumstances, market size, and strategy. When these asymmetries involve price related

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7An important caveat to this assertion is that under a rational expectations equilibrium this bias cannot occur, because in equilibrium, no parties’ beliefs can be systematically biased, even if another party (i.e., a predator) is attempting to act in ways designed to create such bias. Under these strict conditions, both the signaling and signal-jamming models of predation are restricted to those circumstances surrounding potential market entry.
variables, they can be employed to alter the perceptions of competing firms' costs and potentially result in predatory outcomes. When these outcomes result in reductions to consumer welfare, they become antitrust concerns.

Various extensions of the signaling models have been developed. Milgrom and Roberts (1982a) first developed the notion of signaling as a theory of limiting pricing, that is, a method of deterring entry through biasing prospective entrant's cost estimates. Roberts (1986) has also developed a model involving the bias of demand estimates to yield a theory of predation aimed at inducing exit or, failing this, restraining a rival's future output. In this model, a more informed predator attempts to make demand appear weak in an effort to induce a rival to exit the market or lower its levels of output. Extensions of the basic model have also been employed to show how firms can be induced to "soften up" a merger candidate through biasing the firm's estimates of its profits, which, in turn, lead to adjustments in the terms of the acquisition (Saloner 1987).

In each of the previous cases, the predatory outcomes that can result are not dependent on lowering price to below-cost levels as required under the current antitrust standard. All that is needed is an informational bias to alter results in a less informed firm altering its conduct. If that conduct results in diminished consumer welfare, anticompetitive predation has occurred. Although these outcomes can also occur for below-cost pricing, the signaling models show that these outcomes can occur at other than below-cost price levels.

Signal-Jamming Models

The signal-jamming models of predation incorporate many of the same aspects of the signaling approaches. In these models, however, the asymmetry of information does not relate to a strategic variable of interest, such as costs or demand, but to the (un)observability of the predator's actions regarding one of these variables.

For example, a strategic variable of competitive interest is a firm's costs. When a predator firm engages in conduct that alters perceptions regarding its costs without a competitor's knowledge or observation of these actions, the firm can obtain information asymmetries. The observability assumption enables the predator to influence the information possessed by its prey and potentially its behavior. In addition, the predator and prey are assumed to possess asymmetries in position; that is, one is contemplating exit from or entry into a market; the other is an incumbent.

A marketing related example of signal jamming involves a firm test-marketing a product in a predator's market. That an incumbent firm possesses an asymmetric advantage of position and there exist information asymmetries (in terms of predator actions) under such conditions is plausible. Under these circumstances, a predator firm may engage in actions unobservable to the firm test-marketing the product, which can cause the firm to underestimate the profitability of the new product. This can occur when the predatory firm provides price breaks or other actions (e.g., information, product preannouncements, incentive promotions) to its markets sub rosa, which disrupt the firm's test market results. If severe enough, the firm may decide not to enter the market. In cases in which the entering firm is as efficient or more efficient than the incumbent, welfare reducing predation may occur.

As with the signaling models of predation, the signal-jamming models neither require nor depend on below-cost pricing. All that is needed is conduct unobservable to a prey occupying an asymmetrical position that results in the firm altering its conduct. If this occurs to the diminution of consumer welfare, this form of predation becomes of antitrust concern.

Reputation Models

The reputation-based models of predation extend the single predator, single prey models to include multiprey considerations to achieve a reputational effect (Posner 1976; Scherer 1980; Williamson 1972, 1977). In these models, a firm operating in several markets attempts to prey upon early entrants by whatever means is available (e.g., signaling, signal-jamming, below-cost) to establish a predatory reputation (Kreps and Wilson 1982; Milgrom and Roberts 1982b). This reputation, in turn, deters other potential entrants, because it leads them to believe that their entry will meet the same predatory response (Masson and Reynolds 1980). Baker (1994, p. 590) provides an example of multimarket predation in which informational asymmetries are present:

Suppose a chain store faces a non-chain rival in each of a large number of [distant] towns. The chain cuts its prices drastically in a few towns. When the chain's rivals in those towns either exit or begin to compete less aggressively with the chain, the price war ends and high prices are restored. In addition, the chain store's rivals in all the other towns, in which the chain did not cut prices, also respond by avoiding aggressive competition with the chain. As a result, prices also increase in the towns in which predation did not occur.

Informational asymmetries within the reputation models are similar to those found within the signaling and signal-jamming models. Preying in this context may be worthwhile in a dynamic sense, even when losses are incurred over the short-term. These profits derive from the economic effects obtainable across time and other preyed upon firms. Beyond these outcomes, a firm may employ these reputational practices to keep rivals from breaking away or follow a particular price system or other tacitly agreed-to policy (McCall 1987). Such "disciplining" may be enough to keep rivals "in line" and maintain price levels at other than competitive levels, thereby disadvantaging consumers.

A key aspect of these models is the necessity of reputation being establishable. This prospect is most likely when firms are operating within multimarket situations in which effects are easily observable to other firms. The greater the number of markets involved also tends to be a factor in this form of predation. Reputational effects might achieve economies of scale in this context.

Similar to both the signal and signal-jamming models, the reputation models do not rely solely on pricing at some below-cost level for their outcomes to be realized. In this way, they contrast markedly from the traditional forms of predatory pricing considered in antitrust. Together, the implication of the newer predation models is that predatory pricing, which involves imposing losses on a current rival through below-cost pricing in hopes of subsequently re-
coupling losses (i.e., classic predatory pricing), is the only model of predation in which below-cost pricing plays any central role (Milgrom and Roberts 1990). Thus, such a standard for detecting predatory pricing is of limited scope in observing alternative predatory strategies.

However, there is no consensus on what standard should be applied for observing these varying strategies of predation. Because of the potential of mistaken inferences extending from evaluating price reductions by competitors (i.e., false positives), considerable debate centers on this issue. In this respect, some scholars of the new learning approach, while acknowledging the social costs of such practices, suggest "it may be best simply to give up on attempts to control predation, even if one believes that it can and does occur," until such problems can be addressed through continued research (Milgrom and Roberts 1990, p. 134). For now, however, the importance of the new learning models resides in their debunking previously held beliefs about the implausibility of predation through identification of a variety of predatory actions that firms can take through other than below-cost pricing.

Antitrust Considerations

Current assessments of predatory pricing, as outlined by the Supreme Court in *Brooke Group* (1993) employ a benchmark of below-cost pricing and a reasonable prospect of recoupment for detecting pricing conduct that may result in diminished consumer welfare. These standards are juxtaposed against the insight offered by the new learning approach, with considerations for antitrust policy discussed.

Injury From a Rival's Price Below Cost

Although the Court in *Brooke Group* (1993) did not announce the appropriate measure of cost to be employed in assessing claims of predatory pricing, litigants in the case agreed on the use of average variable cost. This measure of below-cost pricing has been employed extensively in the Courts since first being proposed by Areeda and Turner (1975). According to these authors, average variable cost represents a surrogate measure of marginal-cost pricing as "the economically sound division between acceptable competitive behavior and 'below-cost' predation" (p. 716).

Adopting a perspective of predation as that of a rival attempting to impose severe losses on a competitor through below-cost pricing in hopes of subsequently recouping these losses, Areeda and Turner believe rules against predatory pricing should be underinclusive, rather than overinclusive, to avoid deterring legitimate, competitive pricing. According to the authors (p. 699), "the prospect of an adequate future payoff" should "seldom be sufficient to motivate predation." As a result, their test bears an inherent skepticism toward predatory claims.

In this context, Areeda and Turner (1975, p. 733) observe that "a price at or above reasonably anticipated [marginal cost] should be conclusively presumed lawful." Furthermore, "[a] price below reasonably anticipated [marginal cost] should be conclusively presumed unlawful" (p. 733) (subsequently amended to "rebuttable presumption" [Areeda and Turner 1978]). Because marginal cost is difficult to determine, average variable cost is suggested as a surrogate.

Viewed against the insight of the new learning approach, a standard of below-cost pricing is indeterminate in its ability to detect pricing behavior that is predatory and injurious to consumer welfare. Such a standard is at once too permissive of some forms of predatory conduct as identified by the signal, signal-jamming, and reputation models, and is simultaneously overly restrictive of other forms of pricing conduct.

From a marketing standpoint, this last point can be illustrated through acknowledging the multitude of nonpredatory motivations underlying a pricing strategy that may result in a price below (or above) cost. Consider, for example, that some suppliers might price their products (e.g., sparkplugs) to manufacturers (i.e., automakers) below cost to attract buyers of replacement parts (i.e., aftermarket spark plugs) if many replacement buyers continue to purchase the original brand even when they are charged a higher price (see *Stitt Spark Plug Co. v. Champion Spark Plug Co.* 1988). Pricing at below-cost in such a case involves not a predatory intent, but a desire to maintain long-term customer relationships.

Similarly, consider that competing copier manufacturers might price their copiers below cost to attract buyers who can later be charged higher prices for parts and services. Or, competing firms producing both cameras and film might set camera prices below cost to sell more film at high prices. Competing sellers of some types of computer software might price their product below cost when high switching costs inhibit migration of the installed customer base to rival software, to increase the number of customers to whom they can subsequently sell high-margin upgrades. Competing truckers might also price certain freight movements below their stand-alone cost when those movements permit the trucker to obtain high-margin back-haul business. Finally, competing computer manufacturers, or those of any high volume product, might price a new product below its initial variable cost to generate, through increased production and sales, the scale economies and cost reductions from the experience curve that would justify the low price. In each of these instances, the reduction of below-cost prices may reflect a procompetitive marketing strategy rather than predation (Baker 1994).

Although it provides a "bright-line" from which to assess pricing conduct, Areeda and Turner's (1975, 1976) approach has shortfalls that extend from its focus on short-term efficiency versus long-term considerations and inherent problems in employing average variable cost as a surrogate for marginal cost (these two constructs equal one another at only one point—minimum average variable cost). Implementation issues in the calculation of variable versus fixed costs in determining average variable costs are also of concern. Set standards for the allocation of costs to either category are not uniformly followed and may vary (Shimer 1981; for equipment depreciation as fixed or variable cost, see *Kelco Disposal, Inc. v. Browning-Ferris Industries, Inc.* 1988).

A key aspect of the Court's holding in *Brooke Group* (1993) is its addressing the below-cost standard. In declining to adopt explicitly average variable cost as its standard and, instead, relying on *an appropriate measure* of cost as its benchmark, the Court appears to have left open the
prospect of further clarifying this standard. In this respect, incorporation of knowledge garnered from the new learning approach would seem particularly important for this refinement.

That predation may occur at both above- and below-cost levels, combined with the assumed potential of false positives being an above-cost standard set, a low-cost standard may seem justified. However, such a conclusion implies an empirical judgment regarding the relative incidence and harm of false positives and false negatives. In the event predatory conduct, through actual empirical study, were found to be more common and costly than currently assumed, a more inclusive standard may be desirable. To be sure, it is too early to tell whether instances of predation occur with greater frequency than is assumed under the current standard. The answer to this question must await empirical study and application of new learning insight in litigation.

Another and equally important aspect of the Court’s holding is its declaration that though a standard of below-cost pricing is a requirement for showing competitive injury, it is not the determining factor (Brooke Group 1993, pp. 4702–3). Instead, the Court maintains that a reasonable prospect of recoupment is the dispositive factor in which to measure injury to competition. By relegating the below-cost criteria to secondary status, the Court further distances itself from previous reliance on this standard (Elzinga and Mills 1994). This shift appears, at least indirectly, to acknowledge the emerging insight of the new learning approach, which shows such a criteria to be indeterminate for some forms of predation.

Together, the Court’s refusal to announce an appropriate measure of cost (if intended) and its relegation of the below-cost standard to secondary status suggests its acknowledgment of the anticompetitive aspect of predatory pricing deriving from the injury to competition that results from a firm’s subsequent recoupment rather than from the initial act of lowering prices. In other words, the decision in Brooke Group (1993) indicates that the Court is no longer concerned with low prices in and of themselves, but rather, with the possibility of subsequent monopoly profits that may be anticompetitive.

This shift has dual implications in the antitrust treatment of predation. First, it enables the Court potentially to assess the many variant forms of pricing conduct identified under the new learning approach and described by others, which may result in anticompetitive consequences. Second, it benefits marketers in their pricing decisions by not prescribing a particular form of pricing conduct to which managers must conform. As to this last implication, the Court’s shift seems to address the concern noted in Matsushita (1986, p. 594), “lest a rule or precedent that authorizes a search for a particular type of undesirable pricing behavior end up [by] discouraging legitimate price competition.” A caveat to this discussion, however, is that the Court may have simply declined to address the appropriate measure of cost to be employed in evaluating the claim of predation, because the litigants agreed on the use of average variable cost. It is possible to interpret the Court’s holding as accepting the use of average variable cost as the appropriate measure of cost.

**Dangerous Probability of Recoupment**

Statements by the Supreme Court in Matsushita (1986) and Cargill (1986) elude to the eventual standard adopted in Brooke Group (1993), which requires a reasonable expectation, based on market circumstances of recovering losses through supracompetitive pricing, to sustain a predatory pricing claim. This requirement was formally adopted in Brooke Group as the second part of its two-prong standard. Quoting their earlier decision in Matsushita (p. 590–91), the Court states:

...in order to recoup their losses, [predators] must obtain enough market power to set higher than competitive prices, and then must sustain those prices long enough to earn in excess profits what they earlier gave up in below-cost prices (Brooke Group 1993, p. 4703).

The Court observes that a reasonable prospect of recoupment is the determinative factor in assessing injury to competition from predatory pricing conduct.

The insight provided by the recoupment standard is that losses by a predator, in whatever amount, must be recovered for predation to make sense and for injury to competition (defined in terms of efficiency) to occur. In this way, recoupment is analogous to competitive injury. Without some form of recoupment, price cutting by an alleged predator benefits consumers. With an expansive definition, a standard of recoupment applies to those models developed under the new learning approach. In other words, though a key contribution of these models is the idea that predatory outcomes can be achieved through incurring more marginal losses than those resulting from low-cost pricing, these losses (or lost profits) must still be recovered in some economic fashion for predation to be a plausible strategy.

The insight to be gained from the newer models, however, is that the amount necessary to be recouped may be much less than previously thought. Moreover, compared to the potential benefits of predation, these losses may be low enough to suggest the plausibility of this practice as a rational strategy.

The implication of the new learning approach is that the judicial criteria set forth in Brooke Group (1993) for establishing recoupment, namely, high market share and high entry barriers, though applicable to predation in a classic sense (e.g., steep price cuts below cost), may not be necessary for the anticompetitive effects of other forms of predatory pricing conduct to manifest themselves (Rapp 1991). As Goldstein (1991, p. 1772) suggests,

Even firms that have no chance to obtain real monopoly power [i.e., do not possess the requisite high market share and entry barriers] might find certain predatory tactics valuable for their reputational effects or as a way to deter new entrants to the market who might become successful competitors, because such tactics might result in future gains to the predator greater than the losses incurred....

Overemphasis on whether conditions exist for obtaining market power enables some firms to engage in predatory conduct that might not result in such power, but nevertheless be harmful to competition and consumer welfare.

An important aspect of the Court’s holding is their refusal, as a matter of law, to rule out the possibility that recoupment could take place through supracompetitive
oligopoly prices. Moreover, the Court accepted the possibility of recoupment through coordinated oligopoly pricing. In this respect, the Court appears to have acknowledged that predatory pricing can occur under the appropriate factual settings prescribed by the new learning approach.

However, undermining this acknowledgment to some degree is the high threshold of proof the Court requires to show recoupment. The Court's holding in *Brooke Group*, in effect, requires proof surpassing the reasonable prospect and dangerous probability elements established legislatively for the Robinson-Patman and Sherman Acts. According to the three dissenting Justices, "[T]he Court's [holding of the majority] most significant error is the assumption that ... Liggett had the burden of proving either the actuality of supra-competitive pricing, or the actuality of tacit collusion [in 'predatorily setting price']" (p. 4712).

Establishment of this criteria requires that a predatory episode be nearly complete before satisfying the necessary burden of proof. Thus, the element further amplifies the emphasis on evaluating the conditions in existence for establishing the probability (or actuality) of obtaining market power.

**Implications and Discussion**

Juxtaposing the theoretical potential of anticompetitive conduct involving predatory pricing by rational firms against the current judicial standards (in particular, the recent test developed in *Brooke Group*), I examine the prevailing standard for predatory pricing. This analysis suggests that the Court's new standard embraces a core theoretical tenet of the new learning approach to predatory pricing; that is, a standard of below marginal cost is indeterminate regarding anticompetitive predatory pricing. The Court also appears to have advanced beyond prior antitrust thinking in its requirement of and emphasis on a showing of recoupment prior to determining that pricing conduct is predatory. In theory, recoupment represents a necessary outcome for predatory practices to be rational.

Overemphasis on conditions necessary for recoupment to occur (i.e., market power) and establishment of an extremely high burden of proof for its finding, however, hinders the effectiveness of the Court's holding for some victims of predation. Thus, the Court's finding in *Brooke Group* represents only an initial step toward embracing emergent thinking regarding predatory pricing.

**Antitrust**

Various scholars have suggested supplementing the extant application of economic analysis in antitrust with other perspectives to improve its explanatory power and enhance its normative prescriptions. For example, Williamson (1979, p. 991) observes, "[A]ntitrust is an interdisciplinary field that is best served by acknowledging that a deeper understanding of the issues will result by addressing the subject from several points of view." Others have also suggested that economic analysis in law could benefit from knowledge garnered within other branches of the social sciences (see, e.g., Ellickson 1989).

Judicial acknowledgment of the benefits of supplementing current analysis with alternative insights as offered by the new learning approach and other perspectives is detectable in at least one recent holding of the Supreme Court. In *Eastman Kodak Company v. Image Technical Services* (1992), a doctrinal shift in how economic analysis is employed in antitrust cases is identifiable. By refusing to uphold a lower court's grant of Summary Judgment, the Court held that an earlier determination of an important issue (i.e., market power) based on mere economic presumption was improper. In this way, the Court shifted away from its use of economic analysis as a basis for determining the economic plausibility or implausibility of an event—and, therefore, the presumptions regarding its occurrence—and toward the use of economic theory as only one tool among others for explaining market realities.

The Court's requirement that the theories brought before it should reflect accurately business reality suggests its willingness to consider perspectives that provide an enriched view of the marketplace (Judson 1993). Those models provided by the new learning approach yield such a perspective. It remains to be seen, however, how many plaintiffs, prosecutors, and antitrust jurists will attempt to apply these developing insights.

The eventual insight to be gained from supplementing current analysis of predatory pricing with alternative insights is to understand better the nature of this practice and the factors contributing to its occurrence. Only in this way can an informed antitrust policy be developed. Although considerable challenge resides in the development of this policy, extant approaches, are, in many ways, inconclusive in their ability to detect predatory conduct.

**Marketing Research**

An important implication of my assessment involves the necessity of continuing to develop our understanding of predation through further research. To date, the majority of insights regarding the nature of predatory conduct has been advanced through economists applying microeconomic theory and static-based conceptions of competition. Newer insights, illustrated here, but not yet explicitly incorporated in current antitrust analysis, have been obtained through consideration of asymmetries in information, dynamic competition, and rationality of decision makers.

Such an inquiry, at its core, investigates the business decision making involving pricing and other strategies at lower levels of abstraction than has been previously conducted. Because the focus of marketing involves strategies of this kind, as well as inquiry at the level of the firm and its decision makers, theory and research from this discipline should be considered an important resource and a potentially useful supplement to current investigations of predation.

Marketing's focus on the nature of pricing strategies and competition, as well as its empirical approach to managerial issues, could yield considerable insight to predation analysis. For example, Heil and Langvardt (1994) focus on competitive market signaling and its implications for antitrust. Reviewing an extensive body of research in marketing and strategic management that shows that managers interpret market actions by others and use these interpretations in their reactions (e.g., the essence of market signaling), they detail a variety of implications for antitrust policy. In partic-
ular, they provide evidence that "a market action may signal substantial aggressiveness and hostility on the part of the signal-sender" (p. 92). Heil and Langvardt also note the potential of relying on this signaling behavior as the foundation for an allegation of predatory pricing, but observe the early stages of such development. In this regard, research that provides a precise delineation of which forms of signaling under which circumstances are suggestive of predatory intent would be useful.

Continued research toward improving our understanding of the extent to which market signaling is employed as a destructive mechanism in competitive interaction would also be fruitful. Eventually, research on signaling and predation could yield a basis for identifying and distinguishing between anticompetitive predatory signaling involving price and price signaling of a procompetitive nature.

One immediate avenue for extending the insight into predatory pricing involves further examination of the stringent theoretical assumptions underlying current predatory pricing policy. Although emergent theory, provided by those studying the new learning approach, addresses assumptions regarding the nature of information held by competitors and favors dynamic analysis over static considerations, both new learning and extant neoclassical price theories maintain the assumption of strict rationality on the part of rivals. Both approaches assume that actors act calculatedly and rationally to maximize their expected utility. Those who subscribe to the neoclassical view argue for the "irrational" nature of predatory conduct. Alternatively, new learning economists suggest ways in which a firm acting rationally may engage in such conduct.

Both the neoclassical and new learning perspectives, however, ignore important issues: (1) Firms, as entities, cannot act on their own; (2) any actions by firms are therefore actions by the human beings who manage the firms; and (3) the actions of human beings are not necessarily rational. Accepting this proposition, further insight about predatory pricing may emerge.

Considerable research, both in economics and its related disciplines, demonstrates that neither the choices people make nor the ways in which they make them meet the requirements of strict rationality. In economics, Simon's (1955, 1956, 1964, 1978) and March and Simon's (1958) works are well-known for their exploration of the ways in which rationality as maximization is descriptively inaccurate. Indeed, their work resulted in the concept of "bounded rationality." Considerable social science now focuses on the idea of rationality as a variable concept.

These research traditions (e.g., psychology, organization theory, marketing) emphasize the extent to which the decision-making process reflects a desire to make the best decision possible under specific circumstances, not whether utility is maximized. Application of this perspective may yield additional insights regarding predatory pricing.

Consideration of nonprofit maximizing behavior in the context of predatory conduct has not been totally ignored in antitrust analysis. For example, Sullivan (1977, p. 110) observes,

The fact that predatory activity is costly to the predator and that there is only an uncertain prospect of adequate supracompetitive returns after others are excluded surely must reduce the frequency of predatory forays. It hardly follows that they never occur or can be safely ignored. Man's capacity for destructive conduct has never been totally inhibited merely because he stands himself in the target area along with his would-be victim.

In a more recent work, Gerla (1985) explores the insight that can be gained from applying the psychology of risk-taking to the issue of predatory pricing. Gerla demonstrates that predatory pricing can be a serious problem when managerial behavior is viewed in light of the psychological theory of risk-taking, instead of in terms of extant neoclassical price theory.

Similarly, addressing the prospect of less than rational behavior, a growing number of scholars in marketing are beginning to explore the procedural rationality of decision making in firms. Accepting the proposition that managers act in ways other than to maximize utility, these researchers have begun to examine the extent to which their decision processes involve (1) the collection of information relevant to the decision and (2) their reliance on analysis of this information in making a decision choice.

Such an approach varies distinctively from the assumption of decision makers as profit maximizers acting absolutely rationally and embraces the notion that managers act variably rationally. A variable conception of rationality enables researchers the potential of further extending the current understanding of predatory pricing. Applying such research, for example, could suggest alternative motives underlying pricing decisions or provide a basis for understanding the circumstances that lead a manager to engage in such conduct.

Beyond characterizing interfirm pricing decision making and behavior and providing explanations for the basis for conduct such as predatory pricing, research in marketing can also provide insight about the effects of this practice. Although marketing has not focused to a great extent on the welfare implications of marketing strategies as defined in antitrust law, constructs relating to consumer welfare are common to marketing scholarship (e.g., satisfaction, choice). Continued debate centers on the legislative correctness or desirability of economic efficiency providing the sole definition of consumer welfare.

Even when using purely economic definitions of consumer welfare (i.e., efficiency), marketing scholars possess the potential of informing current antitrust analysis. As currently defined, productive and allocative efficiency are most often identified as the economic standards against which welfare implications for consumers should be judged (Bork 1978). Efficiency in this context refers to the maximization of societal resources through efficient use of inputs (i.e., productive efficiency) and efficient quantity of outputs (i.e., allocative efficiency). Productive efficiency reflects efficiency within a single exchange, market channel, or industry and entails the maximization of input resources and the minimization of process costs associated with these resources. High productive efficiency is achieved through producing and distributing a product with a minimum consumption of resources.

Much of marketing entails development of strategies directed at achieving these outcomes. For example, across marketing functions, just-in-time inventory systems, inter-
firm partnering relationships, and interfirm influence or control mechanisms are directed at achieving efficiency in the distribution of goods to consumers. Efficiency-based dependent variables examined in marketing research include performance indices within the firm and across exchange relationships (e.g., intra- and interfirm relationships) and relate to productive efficiency.

Allocative efficiency is the efficiency of output across industries and involves the question of whether societal resources should be invested in one industry as opposed to another. Allocative efficiency is a measure of the success of an economic system in maximizing consumer preferences from the limited resources available.

Marketing has not examined the question of allocative efficiency directly, because its unit of analysis has emphasized the dyad. Recently, however, scholars have begun to expand their focus beyond dyadic relationships and have addressed issues underlying broader networks of exchange relationships (e.g., Iacobucci and Hopkins 1992). In this respect, market channel relationships have been viewed as value chains or systems of interrelated organizations involved in marketing to end-users. Truer network conceptualizations have also been advanced. This expansion holds the potential for examining the relative efficiency of differing exchange systems and, thus, addressing issues regarding allocative efficiency.

Marketing Practitioners

For marketing managers engaged in pricing decisions, current judicial and antitrust enforcement standards suggest that aggressive pricing strategies—including those involving below-cost pricing—will be considered violative of the antitrust laws only under limited situations (e.g., those that satisfy the Supreme Court’s two-part test). Firms contemplating such strategies in circumstances in which the probability of recoupment is not a reasonable prospect or a dangerous probability (according to the Court’s test) do not violate the law. Of course, before their implementation, such strategies should be scrutinized at length for their individual antitrust implications.

Marketers who find themselves the target of predatory pricing possess limited judicial recourse in the absence of circumstances that meet the standards set forth by the Supreme Court. These standards reflect a suspicious posture toward predatory claims. A review of cases that have been brought before the court suggest few circumstances in which victims of predation have been successful in their claims.

Conclusion

Predatory pricing represents a particularly troublesome antitrust concept. On the one hand, a rival’s lowering of price can enhance consumer welfare. On the other hand, such behavior can also disadvantage consumers under particular circumstances. Extant antitrust thinking, driven primarily by neoclassical price theory, envisions predatory pricing as cutting prices to below-cost levels in hopes of driving a rival from the market and subsequently raising prices to supra-competitive levels. Those who still view predation as such contend that because it does not provide advantages to a firm, given the extreme losses that must be incurred, it is rationally implausible and therefore rare. Emergent theory, through inclusion of additional factors and alternative perspectives, however, indicates that the plausibility of predatory strategies may be greater than once thought. Incorporating strategic considerations and relaxing prior assumptions regarding perfect information among competitors, a variety of models of predation have been developed that do not depend on extreme below-cost pricing to achieve their anticompetitive outcomes. At its center, this paradigm emphasizes the imperfect information and dynamic qualities of economic interaction. In this way, the new learning approach provides an enriched framework for understanding predatory practices.

My analysis indicates the necessity of further inquiry and research into this perspective to aid in the development of a more informed antitrust policy. In this respect, the marketing discipline should be considered a potential source of knowledge and research for furthering our understanding of this phenomenon and for developing such a policy.

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