

The Predatory Pricing Practice: The Challenges of Business Competition Law on Ride-Hailing Tariff's War

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Abstract. *The predatory pricing is inherently a dynamic strategy typically taking place in a single market, whereby a firm incurs a sacrifice in the short run to exclude competitors, in order to acquire a dominant position. In order to establish fair business growth and ensure equal business opportunities, a healthy environment for the business competition is highly needed. Since 2014, the market share of the ride-hailing sector in Indonesia has been dominated by three providers, namely Grab, Gojek, and Maxim. The three companies provide subsidies and discounts on services-price so that users' rates are cheaper than conventional taxis. This certainly has led to unfair competition and is very detrimental to conventional taxi. This research is normative juridical research that uses a statutory approach and a conceptual approach to analyze the alleged predatory pricing practices in the ride-hailing industry in Indonesia from the perspective of business competition law. The results show that the imposition of unfair prices can be seen from prices gap shown in the application with prices imposition, which should be based on travel distance in order to acquire a dominant position allowing it to recoup its losses and earn supracompetitive profits in the long run. This pattern of sacrifice-then-recoupment is found in the case law as well.*

Keywords: Competition; Industry; Predatory; Pricing.

1. INTRODUCTION

During the last decade, margin squeeze (or price squeeze)¹ allegations in the enforcement practice of regulatory and competition authorities, especially in the telecommunications sector and other newly liberalized network The business world, at the same time, faces more and more challenges, including commercial or trade competition that leads to competition on product/commodity and tariffs.² Therefore, every country must be able to compete in the utilization of technology and its application into all activities in life.

Online application-based transportation services are inevitable as it provides

¹ Gaudin, Germain, and Despoina Mantzari. "Margin squeeze: an above-cost predatory pricing approach." *Journal of Competition Law & Economics* 12, no. 1 (2016): 151-179.

² Muhammad T. Makarao. & Suharsil, *Hukum Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat*. Bogor: Ghalia Indonesia, (2010), p. 3.

opportunities for business actors.³ Ride-hailing companies utilize technology by providing practical application service that is transparent and secure on smartphones. The online application for transportation services provides detailed information such as fares, driver name, driver position, vehicle plate number, and estimated travel time. Registered drivers must have a complete identity and driving equipment that comply with the Indonesian National Standard (SNI).

The development of the ride-hailing industry in Indonesia began when PT. Aplikasi Karya Anak Bangsa launched an application named Gojek in January 2015. Then, four months later, Grab service developed by PT. Solusi Transportasi Indonesia was launched. After the launch of the two applications, online motorcycle taxis immediately became one of the most popular start-up businesses in Indonesia. When it comes to ride-hailing services, the fare is determined by the application operator which is calculated based on the travel distance. The profit earned by the application is the margin from the base fare. Therefore, the service fee received by drivers after completing the trip will be different from the displayed fare paid by the users.

The rapid development of the ride-hailing industry in Indonesia has resulted in a very significant drop in conventional taxi companies' revenue. Many conventional taxi companies have stopped operating because they continue to experience losses. People prefer to use online taxis because they are more practical and offer certainty of fares in every transaction. Besides, the service providers also dispense fare subsidies so that the offered rates are cheaper than conventional taxis. From 2016 to 2017, 31 out of the 35 registered conventional taxi companies have stopped operating.

However, in mid-2019, the Ministry of Transportation and the Business Competition Supervisory Commission in Indonesia stated that there were indications of violations of unfair business competition committed by online transportation service providers because the imposition of service fares were allegedly unable to cover operational costs that must be incurred by the company. Based on the provisions of Article 20 of Act No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, "business actors are prohibited from supplying goods and/or services by selling at a loss or by setting very low prices with the intention of eliminating or shutting down the businesses of their competitors in the market that resulting in monopolistic practices and/or unfair business competition". This is in line with Richard A. Posner who proposes that predation as pricing actions of a dominant undertaking that aim to remove the effective competitor from the market.⁴ Antitrust regulation of predatory pricing is limited, however, by the challenges of differentiating potentially anticompetitive predatory pricing from procompetitive price competition.⁵

On the one side, setting prices below marginal cost will benefit consumers in the short run because of the offered prices for goods or services are reasonably lower. However, in the long run, this practice will cause competing companies to be eliminated from the market so that the business owners can increase the price of goods and/or services

³ Puisto, Aarne., & Alavi, Hamed. (2016). Abuse of Dominant Market Position by Predatory Pricing; The Valio Case. *Hasanuddin Law Review*, 2 (1), 24-37. doi: <http://dx.doi.org/10.20956/halrev.v1i1.212>

⁴ Richard A. Posner, *Antitrust Law: An Economic Perspective*, Chicago: University of Chicago Press, (1976), p.189.

⁵ Bruce H. Kobayashi, "The Law and Economics of Predatory Pricing" *George Mason University Law and Economics Research Paper Series* 08-41. (2021). <http://dx.doi.org/10.4337/9781849805285.00012>.

above a reasonable price. Companies that run this unfair strategy generally argue that the price offered is the result of the company's efficiency improvement performance. Therefore, predatory pricing practices cannot be detected immediately until competitors can measure exactly how much is the lowest price which can actually be offered to consumers.⁶

Based on information obtained from katadata.co.id, the predatory pricing practices of online transportation application operator has occurred in Singapore committed by Grab. In this case, Grab has set aside US\$2.5 billion for the promotion war. After acquiring Uber, Grab increased the fare by 10-15 percent during March-July 2018. This fare is predicted to be increased again in 2021 and is predicted to reach 20-30 percent. At the same time, the incentives for driver-partners are significantly reduced. This action caused Grab to be fined IDR 140 billion by the Competition and Consumer Commission of Singapore (CCCS).⁷

Price fixing below the market price (predatory price/dumping) is carried out by business actors as a way to get rid of their competitors by setting very low prices.⁸ In simple terms, selling at a loss can be illustrated as when a company that has a dominant position or strong financial capacity (deep pocket) sells its products below the production price with the aim of forcing competitors out of the market.⁹ This is what Grab, Gojek and Maxim allegedly has committed in Indonesia. After the government set the tariff for online motorcycle taxis on May 1, 2019, online transportation service providers began to aggressively carry out promotional strategies to attract consumers. The Business Competition Supervisory Commission (KPPU) has indicated the practice of predatory pricing after the implementation of online motorcycle taxi tariffs. Therefore, the author is interested in studying the concept of proof of the alleged predatory pricing practices of application providers in the ride-hailing industry in Indonesia based on the provisions of Act No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

2. RESEARCH METHODS

This research is a normative legal study to analyse the alleged predatory pricing practices in the ride-hailing industry in Indonesia based on the perspective of competition law. To obtain the data, the author conducted a literature study by collecting and studying primary and secondary legal materials in the form of books, articles, research results, and laws and regulations that are relevant to the research object. The selected materials were analysed using qualitative techniques and then presented descriptively by examining the existing problems and then concluding them in a synchronous, systematic, and scientific manner which was shown according to the factual data.

⁶ Ayudha D. Prayoga et.al, *Persaingan Usaha dan Hukum yang Mengaturnya di Indonesia*, Jakarta: Proyek ELIPS, (2000), p. 50.

⁷ [Katadata.com](https://katadata.co.id/safrezifitra/berita/5e9a518358779/praktik-predatory-pricing-di-ojek-online), "Praktik Predatory Pricing di Ojek Online", Juni, 26, 2019. Available online <https://katadata.co.id/safrezifitra/berita/5e9a518358779/praktik-predatory-pricing-di-ojek-online>.

⁸ Rachmadi Usman, *Hukum Persaingan Usaha di Indonesia*, Jakarta: Sinar Grafika, (2013), p. 244-247.

⁹ Mustafa K. Rokan, *Hukum Persaingan Usaha (Teori dan Prakteknya di Indonesia)*, Jakarta: RajaGrafindo Persada, (2010), p. 157.

3. RESULT AND DISCUSSION

3.1. The Several Series of Tests to Prove Predatory Pricing Practices

Predatory pricing is inherently a dynamic strategy typically taking place in a single market, whereby a firm incurs a sacrifice in the short run to exclude competitors, in order to acquire a dominant position allowing it to recoup its losses and earn supracompetitive profits in the long run.¹⁰ This pattern of sacrifice-then-recoupment is found in the case law as well.

Democracy in the economic sector requires equal opportunities for every individual to carry out production and marketing activities of goods and or services. A fair business condition is expected to encourage economic growth and fair market mechanism.

The current economic growth in Indonesia has developed towards a market-oriented direction which has inflicted competition in various national economic activities. When it comes to business, competition must be seen as a positive thing. As explained in economic theory, perfect competition is an ideal market condition. There are at least four assumptions that underlie perfect competition in a particular market. First, business actors cannot unilaterally determine prices for products or services. Second, product homogeneity. Third, perfect mobility of resources. Fourth, consumers and business actors have perfect information about various things, including preferences, income levels, and the costs and technologies used to produce goods and services.¹¹ Business competition law, philosophically, reflects the effort of the Indonesian economy to create a conducive business by regulating a fair business competition to ensure the certainty of equal business opportunities for large business actors, medium business actors, and small business actors.¹² Business competition law is then intended as a law that regulates the interaction business actors in the market.¹³

In the current practice in business, unfair behaviour of business actors is still common. To build market power, business actors take actions that are detrimental to their competitors, such as carrying out market restrictions, barriers to entry, entering into collusive agreements to regulate prices, limiting output, regulating markets, and carrying out other anti-competitive practices.¹⁴ Predatory pricing is a two-step strategy for securing monopoly profits. The first step, a firm charges a price below its costs in the hope of driving its competitors out of the market by forcing them to sell at a loss as well. The second step, after it has the market to itself, the now dominant firm charges a monopoly price in an effort to recoup the losses it sustained in the *prédation* stage and to earn a steady stream of monopoly profits into the future.¹⁵ According to Raimundas Moisejevas, predatory pricing occurs when the dominant undertaking sets

¹⁰ Hemphill, C. Scott, and Philip J. Weiser. "Beyond Brooke Group: Bringing reality to the law of predatory pricing." *Yale Law Journal*, 127 (2017): 2048.

¹¹ Hikmahanto Juwana, "Sekilas Tentang Hukum Persaingan dan UU No 5 Tahun 1999". *Jurnal Magister Ilmu Hukum* 1, No. 1 (1999): 30-31.

¹² Ahmad Kaylani, *Negara dan Pasar dalam Bingkai Kebijakan Persaingan*, Jakarta: KPPU, (2011), p. 23.

¹³ Andi F. Lubis, et.al. *Hukum Persaingan Usaha: Antara Teks dan Konteks*, Jakarta: Creative Media, (2009), p. 21.

¹⁴ Komisi Pengawas Persaingan Usaha, "Pedoman Pelaksanaan Pasal 20 Tentang Predatory Pricing", 2009, Available online https://www.kppu.go.id/docs/Pedoman/pedoman_pasal_20_jual_rugi.pdf.

¹⁵ Christopher R. Leslie, "Predatory Pricing and Recoupment". *Columbia Law Review* 113, No. 7 (2013): 1695. <https://www.jstor.org/stable/23561380>.

prices lower than the costs of production and creates additional barriers for new competitors to enter the market and subsequently established high prices.¹⁶

Although aggressive pricing by one firm may initially provide lower prices to consumers, the behavior also can be predatory and ultimately result in undesirable welfare consequences. To date, the reasons and efficacy of predatory pricing strategies are still controversial. Some economists argue that this strategy requires a very expensive cost and effort that is not easy to remove competitors from the market.¹⁷ However, in certain markets of goods or services, business actors who supply goods and/or services by setting very low prices cannot be said to intend to eliminate their competitors they have a large production scale.

The traditional theory of predatory pricing is straightforward. The predator, already a dominant firm, sets its prices so low for a sufficient period of time that its competitors leave the market and others are deterred from entering. The theory also implies that some method exists for the predator to outlast its victim(s), whether through greater cash reserves, better financing or cross-subsidisation from other markets or other products.¹⁸

In association with selling at a loss or setting a very low price by PT. Grab Indonesia (Grab), PT. Aplikasi Karya Anak Bangsa (Gojek) and Maxim, an approach to furtherly see whether the pricing is reasonable is required. The approach includes an analysis of the ability of the business actor to cover losses in a fairly long period of time, and a financial analysis of the business actor related to the comparison between revenues and operational costs incurred. This analysis was conducted to see whether the low-price set by the company was reasonable. Before stating that Grab, Gojek, and Maxim are committing predatory pricing practices, two (2) stages of analysis must first be carried out related to the implementation of unreasonable prices by these companies. First, consider the characteristics of the market, for example the concentration of application operators and the conditions for entering the market as indicated by the existence of market power. Second, ensure that the price level applied is unreasonable, by evaluating the comparison between the price set by predatory business actors and production costs.

There are several series of tests that can be carried out to prove whether Grab, Gojek, and Maxim are practicing predatory pricing in Indonesia. These tests are:

a. Price-Cost Test

This test is used to determine whether the sale and loss action taken by Grab, Gojek, and Maxim is part of the implementation of a predatory pricing strategy. If the stipulated transportation service fare is below the production cost, it can be suspected that the company has violated the rules of fair business competition. So, this test aims to provide information that these actions lead to predatory pricing.

¹⁶ Raimundas, "Predatory Pricing: A Framework For Analysis". *Baltic Journal of Law & Politics* 10, No. 1 (2017): 124-155. <http://dx.doi.org/10.1515/bjlp-2017-0005>.

¹⁷ Andi F. Lubis, et. al. *Op. Cit.*

¹⁸ Organisation For Economic Co-Operation And Development, "Predatory Pricing", 1989. Available online <http://www.oecd.org/competition/abuse/2375661.pdf>.

b. Areeda-Turner Test

According to Areeda and Turner, the pricing of goods and/or services is categorized as predatory if it is determined to be less than the short-term marginal cost. Based on practices that happen in Indonesia, Grab, Gojek, and Maxim offer online application-based transportation services at very low prices. This has attracted the attention of the public and resulted in the majority of public transportation services consumers switching to Grab, Gojek, and Maxim. In addition, Grab, Gojek and Maxim offer promotions in the form of discount vouchers by using certain electronic payment methods or through subscription package. Promotional tariffs can be set at 100% or service users only pay one rupiah.

Promotion is "essentially a marketing activity that seeks to disseminate information, to influence/persuade, and/or to remind the target market of the company and its products to be willing to accept, buy, and be loyal to the products that offered".¹⁹ The use of such promotions and discounts may create unreasonable prices. In the long run, this practice can eliminate other business actors and as well competition in the same market. This has the potential to lead to monopolistic practice of predatory business actors in the online transportation industry which will weaken the bargaining position of drivers as partners and service users. In addition, the practice of predatory pricing can also make competing companies leave the market and prevent new business actors from entering.

William J. Baumol explores principles for execution of the widely accepted Areeda-Turner test of predatory pricing. Baumol concluded that "(1) any individual price that is not below average avoidable cost cannot be predatory; (2) average avoidable cost is crucial in testing predation; (3) sets of prices of different products of the firm can violate the test if the revenues of any combinations of the firm's products fall short of the combined avoidable costs of those products; (4) a firm's failure to maximize its profits during some relatively brief period is not by itself legitimate evidence of predation".²⁰

Until the middle of 2021, only Grab, Gojek, and Maxim have managed to survive and dominate the market of the ride-hailing industry. Uber and Blue Bird have even joined forces to become Grab partners. The death of the online transportation business is because Grab and Gojek are giving massive promotions. Gojek issues a tariff promotion of IDR 10.000 anywhere, and up to a 50 percent discount for those who pay using Gopay. Meanwhile, Grab provides free travel coupons and discounts.

If this tariff war continues, it can be predicted that one of Grab, Gojek, and Maxim will be eliminated from the market. Companies that can survive are companies that have strong funding. Some economists argue that discounts or promos that are continuously offered will have a negative impact on the company's financial performance because the price set is only able to cover variable costs and ignore the fixed costs. Therefore, the practice of predatory pricing will only be carried out by a predatory company.

¹⁹ Anastasia, Diana, *Mengenal E-Business*, Yogyakarta: Andi, (2001), p. 219.

²⁰ William J. Baumol, "Predation and the Logic of the Average Variable Cost Test". *The Journal of Law & Economics* 39, No. 1 (1996): 49-72. <https://doi.org/10.1086/467343>.

According to Tulus Abadi, Chair of the Indonesian Consumers Foundation (YLKI) Daily, that discounted online transportation fares should not be a problem as long as the fares that have been discounted by transportation service providers are still within the range of Lower Limit Tariffs (TBB) to Upper Limit Tariffs (TBA).²¹ As for the amount of the service fee for the use of motorbikes for the benefit of the community via application, it has been regulated based on the Zoning system in the Decree of the Minister of Transportation of the Republic of Indonesia Number KP 348 of 2019, which is as follows:

a. Service Fee Zone I (Sumatra, Bali, Java and surrounding areas except Jakarta, Bogor, Depok, Tangerang and Bekasi)

- 1) The lower limit service fee is IDR 1,850/km;
- 2) The upper limit service fee is IDR 2,300/km;
- 3) Minimum service fee with service fee range between IDR 7,000 to IDR 10,000.

b. Zone II Service Fee (Jakarta, Bogor, Depok, Tangerang and Bekasi)

- 1) The lower limit service fee is IDR 2,000/km;
- 2) The upper limit service fee is IDR 2,500/km;
- 3) Minimum service fee with service fee range between IDR 8,000 to IDR 10,000.

c. Zone III Service Fee (Kalimantan, Sulawesi, Nusa Tenggara Islands, Maluku Islands, and Papua)

- 1) The lower limit service fee is IDR 2,100/km;
- 2) The upper limit service fee is IDR 2,600/km;
- 3) Minimum service fee with service fee range between IDR 7,000 to IDR 10,000.

The service fees mentioned above are service fees which has excluded indirect cost in the form of application rental fees.

c. Average Total Cost Test (ATC Test)

²¹ Hukumonline.com, "Menyoroti Diskon Ojek Online yang Mengarah Predatory pricing", June, 18, 2019, Available online <https://www.hukumonline.com/berita/baca/lt5d08b351e6a51/menyoroti-diskon-ojek-online-yang-mengarah-i-predatory-pricing-i>.

Prices below AVC are confirmed as predatory, while prices above AVC but below ATC can also be called predatory.²²

d. Average Avoidable Cost Test (AAC Test)

The advantage of using this test is that it is considered a better estimate of AVC for business actors suspected of committing predatory pricing. In carrying out predatory pricing practices, business actors are often forced to increase their fixed costs in effort to increase production capacity aimed at absorbing all market demand.

If this test is used to assess whether Grab, Gojek, and Maxim perform predatory pricing, it is necessary to first know the cost component in online transportation services providing. Based on the Decree of the Minister of Transportation of the Republic of Indonesia Number KP 348 of 2019 concerning Guidelines for Calculation of Fees for the Use of Motorcycles Used for the Interest of the Community via Applications, it is regulated regarding cost components consisting of direct costs and indirect costs. Direct costs comprise of:

- a. Vehicle depreciation;
- b. Vehicle capital interest;
- c. Driver's cost, which includes income, jacket, driver's and passenger's helmet, and shoes;
- d. Insurance, which includes vehicle insurance, driver insurance, and passenger insurance;
- e. Vehicle tax;
- f. Fuel;
- g. Tire;
- h. Maintenance and repair, which includes battery costs, small service costs, large service costs, body maintenance costs, spare parts replacement costs, vehicle washing costs, and machine overhaul costs;
- i. Cell phone depreciation expense;
- j. Charges for credit or internet quota
- k. Partner profit ((subtotal (a) to (j)) x percentage of partner profit)

²² KPPU, *Op. Cit.* p. 20

Meanwhile, the indirect costs component consists of the rental fee for the use of the application. Furthermore, the components of direct costs and indirect costs are summed to obtain the total value of service costs (IDR/Km).

e. Recoupment Test

Recoupment inquiries play an important role in predatory pricing cases. Nevertheless, their place in antitrust analysis is unclear and potentially problematic.²³ Therefore, recoupment applies as well to any allegedly anticompetitive conduct that is costly to undertake.²⁴

The Recoupment Test is not used to prove that a business actor is practicing predatory pricing, but rather to examine whether the business actor carrying out this practice has succeeded in achieving its goal.²⁵

Recoupment Test is the initial investigation stage. If it is proven that the business actor accused of practicing predatory pricing does not exclude or prevent his competitor from entering the market, or the attempt to cover losses is ultimately not possible, then this test allows KPPU to release the accused business actor from being accused of being predatory, without having to carry out a price-cost.²⁶

3.2. Predatory Pricing in the Indonesian Business Competition Laws

In Indonesia, rules regarding predatory pricing have been regulated in Article 20 of Act No. 5 of 1999. To oversee the implementation of the law, the Indonesian government has established KPPU which is independent and reports directly to the President. Violations and procedures for handling cases have been regulated in Article 38 to 46. Based on these provisions, "it is known that any person who knows that a violation has occurred or is reasonably suspected of having occurred in violation of this Law can report in writing to the commission with a clear description of the occurrence of a violation, and to include the identity of the reporter". In addition, parties who are harmed because of a violation of this Law can also report in writing to the Commission with complete and clear information about the occurrence of a violation and the losses incurred, and to include the identity of the reporter who must be kept confidential by the Commission. Based on the report, the Commission is obligated to conduct a preliminary examination, and within 30 (thirty) days after receiving the report, the Commission is obliged to determine whether further examination is necessary. In the follow-up examination, the commission is obligated to conduct an examination of the reported business actor and must maintain the confidentiality of the information obtained from the business actor which is categorized as company secret. Furthermore, if deemed necessary, the commission may hear testimony from witnesses, expert witnesses, and/or other parties.

The Business Competition Supervisory Commission can also conduct examinations of

²³ Harvard J. M. Olin. (2018). "Recoupment, Market Power, and Predatory Pricing Forthcoming". *Antitrust Law Journal*, 82: 967.

²⁴ Louis, Kaplow. (2018). "Recoupment and Predatory Analysis". *Journal of Legal Analysis*, 10: 46-112

²⁵ KPPU, *Op.Cit.*, 21

²⁶ *Ibid.*

business actors if there are allegations of violations even without a report. Business actors and/or other parties who are being examined are obligated to submit the evidence needed in the investigation and/or examination. In addition, business actors are also prohibited from refusing to be examined, refusing to provide information needed in an investigation and/or examination, or hindering the investigation and/or examination process. Therefore, in order to ensure that business competition provisions are adhered to by business actors, the Business Competition Supervisory Commission must take various approaches in enforcing business competition law, including administrative law, civil law, and criminal law approaches.²⁷ However, KPPU is not authorized to impose criminal and civil sanctions. KPPU is more of an administrative institution because its mandate is administrative authority.²⁸

For comparison, in the United States of America, courts have been circumspect in their assessments of predatory pricing allegations to avoid mistaken inferences.²⁹ According to Aaron S. Edlin, "to find a defendant guilty of predatory pricing, a plaintiff must prove two elements: first, that the defendant priced below its own costs; and second, that it had a sufficient possibility of recovering the ensuing losses from higher prices after the predation lessened competition".³⁰

To prove that the application operators have practiced predatory pricing, the Business Competition Supervisory Commission must see and pay attention to the following 2 (two) things:

- a. It must be proven that the application operator charges the service fee at a below the average price. If the company charges a low price but does not lose money, then the company has been competing fairly. The company can provide services at a low price because it is much more efficient than its competitors.
- b. If it is proven that the company charges service fees at a loss, then it must be proven that the company has the capacity to allow sell at a loss because it avoids potential further losses or simply obtains funds to get out of the market.

If KPPU can prove that the transportation service provider has practiced predatory pricing, based on the provisions of Article 20 of Act No. 5 of 1999, "the business actor can be threatened with a fine a minimum of IDR 5,000,000,000.00 and a maximum of IDR 25,000,000,000.00, or imprisonment in lieu of a fine for a maximum of 5 months".

In the EU, Courts have considered the Areeda-Turner test as a starting point, but they

²⁷ Arie, Siswanto, *Hukum Persaingan Usaha*, Jakarta: Ghalia Indonesia, (2004), p. 56.

²⁸ Susanti A. Nugroho, *Hukum Persaingan Usaha di Indonesia dalam Teori dan Praktik serta Penerapan Hukumnya*, Jakarta: Kencana, (2012), p. 546-547.

²⁹ Ashutosh Dixit. et. al. "Aggressive and Predatory Pricing: Insights and Empirical Examination in the Airline Industry". *Journal of Public Policy & Marketing* 25, No. 2 (2006): 172-187. <https://doi.org/10.1509%2Fjppm.25.2.172>.

³⁰ [Aaron S. Edlin](#), "Predatory Pricing: Limiting Brooke Groupeto Monopolies and Sound Implementation of Price-Cost Comparison". *The Yale Law Journal* 127, (2018): 996-1012. https://www.yalelawjournal.org/pdf/Edlin_istirb9s.pdf

have introduced some important modifications. Hence, the legal test established defines as anticompetitive prices below AVC, and also prices above AVC, but below average total cost, "if they are determined as part of a plan for eliminating a competitor."³¹ In the former case, foreclosure is implied by the dominant firm's pricing strategy, which would typically prove irrational if it were not for excluding competitors.

For this reason, the concept of predatory pricing under Article 20 of anti-monopoly law, if imposed on platform business models like Grab and Gojek, will cause a turmoil in their market, and halt innovations. The supply will not meet the demand, and therefore there will be a deadweight loss which results in an inefficiency in the market.³² Hence, safe to say that the anti-monopoly Law in Indonesia is outdated, and unable to accommodate the implementation of business practice in a two-sided platform.

4. CONCLUSION

The use of promotions and discounts by Grab, Gojek, and Maxim, has led to unreasonable pricing. This unreasonable price can be seen from the difference shown in the application, that is the fare according to the travel distance and the amount paid by the service user after discount. The indications of predatory pricing practices by the company became stronger after several competing transportation service providers began to withdraw and stop operating. Therefore, a number of processes must be carried out by the KPPU as the only independent institution that has the authority to decide the alleged occurrence of predatory pricing so that this practice does not harm the sustainability of ride-hailing industry in Indonesia. To prove the alleged occurrence of predatory pricing practices by online transportation application providers in Indonesia, KPPU must involve competent experts to conduct a series of tests to detect this. The procedure for handling the problem must be carried out in stages, starting from the investigation, filing, investigation, and trial stages. With serious attention from the government through related institutions, it is hoped that consumers who use services and drivers as partners will be protected from the predatory pricing practices.

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³¹ Herbert Hovenkamp, The Areeda-Turner Test for Exclusionary Pricing: A Critical Journal, 46 *Rev. Indus. Org.* 209 (2015) (noting that "every federal circuit except the Eleventh has embraced some variation of the test that Areeda and Turner proposed.")

³² Nurcahyawan, T., & Huang, M. V. (2020). Predatory Pricing in the Online Transportation Platforms: Is It Really Predatory?. In *Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2019)* (pp. 545-552).

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