



## PROTECTING DIGITAL MARKET COMPETITION IN INDONESIA: INSIGHTS FROM MALAYSIA, SINGAPORE, AND GLOBAL AI ABUSE

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**Abstract:** This study examines the legal and economic dimensions of predatory pricing in Indonesia's digital economy, emphasizing the effectiveness of existing competition law in addressing anti-competitive practices in online markets. The issue has become increasingly relevant as digitalization transforms market dynamics and creates new challenges for the enforcement of fair competition law. The primary objective of this research is to evaluate the effectiveness of Indonesia's legal framework, particularly Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition and Minister of Trade Regulation No. 31 of 2023, in preventing predatory pricing in the digital era. The research employs a normative, juridical, and comparative approach, with data collected through document analysis of legislation, court decisions, and relevant academic literature. The normative approach assesses the alignment between legal norms and their implementation in practice. In contrast, the comparative approach analyzes competition policies in Singapore and Malaysia, two ASEAN countries with regulatory frameworks and supervisory mechanisms that are more adaptable to the digital economy. Findings indicate that Indonesia's legal framework remains largely reactive rather than preventive, with weaknesses in the definition of predatory pricing and in inter-agency coordination. In contrast, Singapore and Malaysia demonstrate stronger institutional mechanisms and more adaptive digital governance. This study recommends strengthening the legal definition, enhancing enforcement capacity, and improving cross-sectoral coordination to support healthy competition in the digital economy. Furthermore, it underscores the importance of ASEAN regional cooperation to improve market oversight and foster greater integration of competition policy across the region.

**Keywords:** ASEAN; Competition Law; Digital Economy; Law No. 5 of 1999; Minister of Trade Regulation No. 31 of 2023; Predatory Pricing

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## I. INTRODUCTION

Micro, Small, and Medium Enterprises (MSMEs) in Indonesia contribute more than 60% to the national Gross Domestic Product (GDP) and absorb around 97% of the workforce, making them the backbone of the national economy. However, the dominance of large companies in the digital economy ecosystem often hinders the growth of MSMEs, particularly through aggressive pricing strategies such as predatory pricing implemented by major digital platforms like Shopee, Tokopedia, and Lazada. These practices allow companies with substantial resources to offer extremely low prices for a certain period, driving small competitors out of the market.<sup>1</sup>

In this context, the application of responsive law in competition policy becomes crucial. Responsive law requires a flexible and participatory approach, where regulators collaborate with stakeholders to create rules relevant to the dynamics of the digital economy.<sup>2</sup>

In Indonesia, the legal framework for competition is regulated under Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, as well as Ministry of Trade Regulation No. 31 of 2023 on Business Licensing, Advertising, Development, and Supervision of Businesses in Electronic Commerce. Additionally, the UNCTAD Resolution 1980 serves as a global reference for healthy competition principles. Nevertheless, existing regulations still face significant challenges in adapting to technological advances and enforcing laws against increasingly complex predatory pricing practices.

The Business Competition Supervisory Commission (KPPU), as the authority to enforce Law No. 5 of 1999, faces limitations in terms of extraterritoriality, making it difficult to reach foreign digital companies operating across borders. Moreover, the absence of technology-based monitoring mechanisms renders predatory pricing

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<sup>1</sup> Yasmanlizar, 2024. *Analisis Dampak Kebijakan Ekonomi Terhadap Pertumbuhan Usaha Mikro Kecil dan Menengah (UMKM) di Era Digital*. Jurnal Studi Ekonomi dan Bisnis Islam (SEBI) 6, no. 2, p. 73 -85, <https://doi.org/10.37567/sebi.v6i2.3183>.

<sup>2</sup> CMSMaster, 2015. *Penerapan Hukum Responsif di Indonesia*. Fakultas Hukum Universitas Pattimura, <https://fh.unpatti.ac.id/penerapan-hukum-responsif-di-indonesia/>.

practices difficult to detect in real-time.<sup>3</sup> As a response, the issuance of Ministry of Trade Regulation No. 31 of 2023 was a step to regulate electronic commerce and limit the dominance of foreign businesses in Indonesia's digital market. However, its implementation still faces challenges, as seen in the TikTok Shop case, which was temporarily halted for allegedly violating fair competition principles but later resumed operations after partnering with PT GoTo Gojek Tokopedia, with over 75% shareholding.<sup>4</sup> This case demonstrates that the main goal of Permendag No. 31 of 2023 for creating a level playing field in business competition that has not yet been fully achieved.

To strengthen national policy, the experiences of Singapore and Malaysia can serve as references. Singapore has developed a digital ecosystem that supports MSMEs through policies ensuring equality between domestic and foreign sellers, including requiring foreign digital service providers to register under the Goods and Services Tax (GST) scheme. Additionally, the Competition and Consumer Commission of Singapore (CCCS) has the authority to investigate alleged predatory pricing by collecting data on prices, market shares, and financial records.<sup>5</sup> Meanwhile, Malaysia strengthens MSME competitiveness through a combination of regulation and access-to-capital policies, such as the Micro Enterprises Facility (MEF) providing unsecured loans up to RM50,000, and efficient logistics policies under the 2015 – 2020 Logistics and Trade Master Plan and the 2019–2030 National Transport Policy, which reduced logistics costs to 13% of national GDP.<sup>6</sup>

From these experiences, it can be concluded that a combination of strong competition regulations and supportive policies for MSMEs is key to creating a healthy business ecosystem. Singapore emphasizes strict monitoring and digital taxes for foreign companies, while Malaysia focuses on strengthening domestic

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<sup>3</sup> Zahra Afina Mahran & Muhamad Hasan Sebyar, 2023. *Pengaruh Peraturan Menteri Perdagangan (PERMENDAG) Nomor 31 Tahun 2023 Terhadap Perkembangan E-Commerce di Indonesia*. Hakim: Jurnal Ilmu Hukum dan Sosial 1, no. 4, p. 51 – 67, <https://doi.org/10.51903/hakim.v1i4.1440>.

<sup>4</sup> Muhammad Fikri, et al., 2024. *Tinjauan Yuridis Permendag No 31 Tahun 2023 Sebagai Upaya Untuk Menciptakan Persaingan Usaha Sehat*. RECHTSWETENSCHAP: Jurnal Mahasiswa Hukum 1, no. 1.

<sup>5</sup> Anti Competitive Agreements, 2025. CCCS, <http://www.cccs.gov.sg/anti-competitive-behaviour/anti-competitive-agreements>.

<sup>6</sup> OCBC Business Banking, 2024. *Where the Government Loans & Grants Are* / OCBC Business Banking MY. <https://www.ocbc.com.my/business-banking/articles/where-the-government-loans-and-grants-are>.

economic structures. Therefore, Indonesia needs to adopt a hybrid model, combining Singapore's regulatory enforcement principles with Malaysia's inclusive policy support, to build a fair, transparent, and sustainable digital competition system at both regional and global levels.

## II. RESEARCH METHODS

This study applies a normative juridical approach, focusing on the analysis of positive law regarding business competition and predatory pricing practices in Indonesia. This approach aims to assess the effectiveness of existing regulations, such as Law No. 5 of 1999 and Ministry of Trade Regulation No. 31 of 2023, in addressing the challenges of unfair business competition in the digital era. Data collection was conducted through document studies, including legislation, court decisions, and relevant academic literature.<sup>7</sup>

The study employs a qualitative normative analysis method, emphasizing an in-depth understanding of applicable legal norms and their practical implementation.<sup>8</sup> The analysis aims to identify regulatory weaknesses, discrepancies between rules and field practices, and enforcement challenges in addressing predatory pricing. Results are presented in a descriptive-analytical format, explaining the legal phenomena, outlining emerging issues, and proposing solutions based on legal and policy theory.

In addition to the normative approach, this study applies a comparative approach by analyzing competition policies and digital trade regulations in Singapore and Malaysia. These countries were selected as comparative objects because of their stricter regulations and more effective monitoring mechanisms. Through this comparative study, the research aims to identify best practices that can be applied in Indonesia.

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<sup>7</sup> Mahmud Marzuki, 2017. *Penelitian Hukum: Edisi Revisi*. Jakarta: Prenada Media.

<sup>8</sup> Sigit Sapto Nugroho, et al., 2020. *Metodologi Riset Hukum*. Surakarta: Oase Pustaka.

### III. ANALYSIS AND DISCUSSION

#### a. Regulation and Implementation of Digital Business Competition in Indonesia

Business competition in Indonesia is regulated under Law No. 5 of 1999 and Ministry of Trade Regulation No. 31 of 2023. While these regulations provide a basic legal framework, their implementation faces several challenges in the context of e-commerce and predatory pricing.

##### 1) Unclear Pricing Standard

Article 20 of Law No. 5 of 1999 prohibits selling at a loss but does not establish upper or lower price limits on digital platforms. This creates opportunities for covert predatory pricing practices, as seen in the TikTok Shop case, where prices were set below production costs under the guise of promotion. Flash sales, for instance, are open to all e-commerce players, making elements of Article 20 (*mens rea*, monopoly, elimination of competitors) difficult to prove. This highlights the need for adaptive legal and economic assessment standards for KPPU to balance digital innovation with fair competition principles.<sup>9</sup>

##### 2) KPPU's Unclear Authority

Articles 42 – 49 of Law No. 5 of 1999 grant investigative authority but do not explicitly mention e-commerce. Digital data is often stored overseas, complicating proof of predatory pricing violations. Regulations created before the digital era result in jurisdictional ambiguities, requiring KPPU to expand the interpretation of “business actors” to include digital platforms.<sup>10</sup> Moreover, e-commerce evolves rapidly; violations can occur and spread within hours through flash sales, rendering slow legal processes ineffective in preventing losses.<sup>11</sup>

##### 3) Government Support for MSMEs

Despite regulations under Permendag No. 31 of 2023, implementation faces significant obstacles, particularly regarding timeliness. Criticism from the Association of Micro, Small, and Medium Enterprises (Akumindo) indicates the government responds slowly to rapid changes in the digital ecosystem,

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<sup>9</sup> Arasyel Noor Vinki Narusweta & Diana Setiawati, 2024. *Alleged Predatory Pricing through Flash Sale Practices on the Tiktok Shop Application*. De Lega Lata: Jurnal Ilmu Hukum 9, no. 1, p. 31 – 41. <https://doi.org/10.30596/dll.v9i1.18056>

<sup>10</sup> Muhammad Fikri, et al., *Ibid*.

<sup>11</sup> Septian Dwi Andini & Astika Nurul Hidayah, 2023. *Dugaan Predatory Pricing pada Promosi Flash Sale: Dimana Peran KPPU?*. Jurnal Penelitian Serambi Hukum 17, no. 1, p. 81 – 95.

especially e-commerce. Planned revisions of the regulation to address market inequities were delayed for seven months, causing losses for traditional / offline MSMEs and demonstrating that policy tends to be reactive rather than anticipatory.<sup>12</sup>

Other legal protections, such as consumer data privacy in e-commerce, are regulated under Government Regulation No. 80 of 2019 on Electronic Systems and Transactions, requiring businesses to manage consumer data securely. However, KPPU's monitoring mechanisms and online dispute resolution (ODR) systems are still being developed for effectiveness in the digital era.<sup>13</sup> A case study in Palembang revealed that the Palembang Go-Digital program reached fewer than 10% of digital MSMEs out of approximately 140,000 in the city.<sup>14</sup> (Mirani, Aryansah, and Musdalifah 2022). This gap indicates that, despite extensive national policies, their effectiveness at the local level remains limited due to factors such as low socialization, fragmented MSME data, and the absence of an integrated Single MSME Data System (SIDT) as a basis for accurate program targeting.<sup>15</sup>

In terms of supervision, predatory pricing practices are regulated under Article 20 of Law No. 5 of 1999, but KPPU's implementation faces legal uncertainty, especially regarding extraterritorial issues in digital trade. KPPU retains authority over all aspects of competition, including limiting extreme discounts potentially harmful to competition. KPPU employs two approaches: per se illegal, automatically deeming actions illegal, and rule of reason, evaluating the effects on competition. Combining these approaches ensures compliance while balancing digital innovation with healthy competition.<sup>16</sup>

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<sup>12</sup> Deky Pariadi, 2018. *Pengawasan E-Commerce Dalam Undang-Undang Pengawasan E-Commerce Dalam Undang-Undang Perdagangan dan Undang-Undang Perlindungan Konsumen*. Jurnal Hukum & Pembangunan 48, no. 3, p. 651 – 669.

<sup>13</sup> Deky Pariadi, *Ibid*.

<sup>14</sup> Dwi Mirani, et al., 2022. *Efektifitas Program Palembang go-digital Bagi Pelaku UMKM di Masa Pandemi Covid-19*. Kolaborasi: Jurnal Administrasi Publik 8, no. 1, p. 108 – 121, <https://doi.org/10.26618/kjap.v8i1.6514>.

<sup>15</sup> Muhammad Fikri, et al., *Ibid*.

<sup>16</sup> Muhammad Rizqy Fadillah, 2023. *Urgensi Perlindungan Hukum Perdagangan Elektronik dalam Perspektif Persaingan Usaha di Indonesia*. TIN: Terapan Informatika Nusantara 4, no. 6, p. 389 – 394, <https://doi.org/10.47065/tin.v4i6.4591>.

## **b. Case Studies of the Digital Economy in Singapore and Malaysia**

### **Regulation and Implementation in Singapore**

Regionally, Singapore demonstrates a more adaptive regulatory approach to the digital economy. Under the Competition Act 2004, anti-competitive practices, including predatory pricing, are prohibited, and the independent Competition and Consumer Commission of Singapore (CCCS) enforces these rules. CCCS has broad authority to investigate abuse of dominant positions, impose financial penalties, and provide guidance relevant to the digital era.<sup>17</sup>

One case that highlights the effectiveness of this regulation is the case of SISTIC Pte Ltd, where the company was found guilty of implementing exclusivity policies that hindered competitors. The CCCS imposed a fine of SGD 989,000 as punishment. Although this case was not directly related to predatory pricing, the strong law enforcement mechanism demonstrates Singapore's regulatory effectiveness in addressing market dominance abuse. Other cases handled by CCCS, such as Coach Operator<sup>18</sup> and Express Bus Operators<sup>19</sup>, fall under the category of price fixing that tends toward predatory pricing; even though technically different, these actions collectively set minimum prices that could drive out and harm competitors.

Singapore also strengthens digital economy oversight through the Goods and Services Tax (GST) on foreign digital services, ensuring that regulations balance domestic and international players.<sup>20</sup> The Competition Act 2004 prohibits three main types of anti-competitive behavior<sup>21</sup>, including:

- 1) Section 34: Prohibition of agreements, decisions, or practices that aim to or result in the prevention, restriction, or distortion of competition (e.g., price fixing and bid-rigging).

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<sup>17</sup> Singapore Statutes Online, 2020. *Competition Act 2004 – Singapore Statutes Online*. <https://sso.agc.gov.sg/act/ca2004>.

<sup>18</sup> CCCS, 2010. *CCS Fines SISTIC.com.Pte Ltd for Abusing its Dominant Position*. CCCS. <http://www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/ccs-fines-sisticcompte-ltd-for-abusing-its-dominant-position>.

<sup>19</sup> CCCS, 2009. *CCS Fines 16 Coach Operators and Association \$1.69 Million For Price-Fixing*. Competition and Consumer Commission of Singapore. <https://www.cccs.gov.sg/media-and-events/newsroom/announcements-and-media-releases/ccs-fines-16-coach-operators-and-association--1-69-million-for-price-fixing/>

<sup>20</sup> CCCS, 2010, *Ibid*.

<sup>21</sup> Singapore Statutes Online, *Ibid*.

- 2) Section 47: Prohibition of behavior that protects, strengthens, or perpetuates a dominant position without merit-based competition, including abuse of collective dominance.
- 3) Section 54: Oversight of mergers and acquisitions that substantially reduce competition.

In managing the digital economy, CCCS adopts an adaptive approach, taking into account digital platform-specific factors, such as control over data, digital assets, user multi-homing, and economies of scope.<sup>22</sup> This approach allows CCCS to target entities acting as gatekeepers, even if their traditional market share is not dominant, thereby providing more effective protection for SMEs from predatory practices.

The As Efficient Competitor (AEC) principle, or AKZO principle, is adopted to differentiate merit-based competition from anti-competitive financial power. CCCS intervenes when a dominant player sacrifices short-term profits to eliminate an efficient competitor, without waiting for evidence of future price recoupment.<sup>23</sup>

The Grab-Uber merger case (2018) illustrates the real-world application of this principle. CCCS found that the merger substantially lessened competition in the ride-hailing market, including impacts on SMEs reliant on the platform. As a behavioral remedy, CCCS directed maintaining pre-merger pricing policies, prohibited driver exclusivity, and facilitated entry for new competitors. Total fines imposed reached S\$13 million, but more importantly, the remedy restored market contestability for small businesses.<sup>24</sup>

CCCS's approach emphasizes control over key inputs, including data, property rights, and physical assets, while considering customer incentives for multi-homing and benefits from economies of scope. By factoring these in, CCCS can target gatekeeper entities whose digital market power may not be visible from traditional market shares. This mechanism protects SMEs from predation or price discrimination due to data control and network effects, even if no physical sales occur below production costs.

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<sup>22</sup> Erlia Rizky Putri Zakarija, 2023. *Perbandingan Konsep Pasar Bersangkutan dalam Ekonomi Digital Antara Indonesia dan Singapura*. "Skripsi" Yogyakarta: Universitas Gadjah Mada.

<sup>23</sup> Patrick Bolton, et al., 1999. *Predatory Pricing: Strategic Theory and Legal Policy*. SSRN Scholarly Paper No. 211689, Social Science Research Network.

<sup>24</sup> Charles David A. Icasiano & Araz Taeihagh, 2021. *Governance of the Risks of Ridesharing in Southeast Asia: An In-Depth Analysis*. Sustainability 13, no. 11, p. 1 – 32.



Methodologically, CCCS uses nuanced price standards to assess predation:<sup>25</sup>

- 1) Prices above Average Total Cost (ATC) are almost always considered lawful.
- 2) Prices between Average Variable Cost (AVC) and ATC may be considered predatory if there is clear evidence of anti-competitive intent to eliminate competitors or create foreclosure.
- 3) Prices below AVC are prima facie predatory, indicating a clear sacrifice of profits.

CCCS imposes financial sanctions (totaling S\$13 million) and, importantly, applies remedial directions aimed at restoring market contestability. Behavioral remedies are particularly relevant as mechanisms for SME protection:<sup>26</sup>

- 1) Interim Price Regulation: Grab was required to maintain pre-merger pricing algorithms (including driver commission rates). This effectively created a safe harbor for new entrants or SMEs to operate without immediately facing predatory price wars driven by post-merger monopoly power.<sup>27</sup>
- 2) Prohibition of Exclusivity: CCCS ordered the removal of all exclusivity clauses binding drivers and fleet partners to Grab. This directly reduced market entry barriers and ensured asset availability (vehicles) for new competitors, such as Go-Jek entering the market at the time.<sup>28</sup>

The AEC principle emphasizes evidence of sacrificed profits to prevent efficient competitors, distinguishing merit-based competition from anti-competitive financial power. The Grab-Uber case shows CCCS's ability to combine ex-post enforcement and ex-ante behavioral control through remedies, maintaining market contestability and preventing permanent harm to SMEs.<sup>29</sup>

## Regulation and Implementation in Malaysia

In 2013, the MyCC (Malaysia Competition Commission) identified a case of predatory pricing by Megasteel, which set extremely low cold steel prices to

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<sup>25</sup> Patrick Bolton, et al., *Ibid.*

<sup>26</sup> Charles David A. Icasiano & Araz Taeiagh., *Ibid.*

<sup>27</sup> *Disentangling Consummated Mergers – Experiences and Challenges – Note by Singapore*, 2022. Retrieved October 14, 2025, [https://one.oecd.org/document/DAF/COMP/WD\(2022\)44/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2022)44/en/pdf).

<sup>28</sup> *Disentangling Consummated Mergers*, *Ibid.*

<sup>29</sup> *Disentangling Consummated Mergers*, *Ibid.*

suppress competitors.<sup>30</sup> Additionally, MyCC issued a proposed decision against MyEG, a dominant entity, for price discrimination and exclusionary behavior similar to predatory pricing in foreign worker permit renewal services.<sup>31</sup>

In Malaysia, competition regulation is governed by the Competition Act 2010, reinforced by the Service Tax (Amendment) Act 2019, which requires foreign digital companies to pay taxes on services provided in Malaysia. The Malaysian government also established the National SME Development Council (NSDC) and the National Economic and Social Development Council (NESDC) to support SMEs through policies on funding access, financial restructuring, infrastructure development, and business consulting. These policies contributed to an increase in the number of SMEs in Malaysia from 1,086,533 in 2016 to 1,151,339 in 2020, with an average annual growth rate of 4.9%.<sup>32</sup>

### c. Retrospective on Predatory Pricing in Singapore and Malaysia

Case studies from Singapore and Malaysia show similarities in the patterns of competition authorities' interventions against practices leading to predatory pricing and abuse of dominant position, especially in the context of the digital economy and strategic markets. In Singapore, the SISTIC Pte Ltd and Uber–Grab merger cases illustrate how the CCCS took action against dominant firms that abused their position through exclusivity policies and market control that blocked opportunities for new entrants. Although these actions did not always involve pricing below cost, they created a foreclosure effect—a condition where competitors lose market access due to strategic behavior by the dominant firm.<sup>33</sup> CCCS's legal approach emphasizes anti-competitive intent (*mens rea*) and the potential impact on market

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<sup>30</sup> *The MyCC Has Cleared Megasteel Sdn. Bhd. From Any Infringement Under The Competition Act 2010*, 2016. Retrieved July 25, 2025, <https://mycc.gov.my/sites/default/files/pdf/newsroom/NEWS%20RELEASE%20MEGASTEEL%20NO%20INFRINGEMENT%20UNDER%20CA2010.pdf>.

<sup>31</sup> *MyCC Issues Proposed Decision Against MyEG*. 2015. Retrieved July 25, 2025, <https://www.mycc.gov.my/sites/default/files/pdf/newsroom/News%20Release%20MyCC%20ISSUE%20PROPOSED%20DECISION%20AGAINST%20MyEG.pdf>.

<sup>32</sup> *Performance of MSMEs in Malaysia*. 2022. Retrieved February 24, 2025, [https://smecorp.gov.my/images/Publication/MSME Insights/2022 23/3Chapter%202 Performance ce%20of%20MSMEs%20in%20Malaysia.pdf](https://smecorp.gov.my/images/Publication/MSME%20Insights/2022%2023/3Chapter%202%20Performance%20of%20MSMEs%20in%20Malaysia.pdf).

<sup>33</sup> Patrick Rey & Jean Tirole, 2007. *Chapter 33 A Primer on Foreclosure*. Handbook of Industrial Organization 3, p. 2145 – 2220, [https://doi.org/10.1016/S1573-448X\(06\)03033-0](https://doi.org/10.1016/S1573-448X(06)03033-0).

contestability, rather than solely focusing on evidence of low prices in absolute terms.<sup>34</sup>

Meanwhile, in Malaysia, the Megasteel and MyEG cases show a similar pattern, where large firms used their dominant positions to set prices or engage in business practices that restricted other players. In Megasteel's case, extremely low steel prices raised suspicions of predatory pricing, while MyEG engaged in price discrimination and exclusionary behavior in digital services that hindered potential competitors.<sup>35</sup> Both cases illustrate how MyCC enforces market fairness under the Competition Act 2010, which also emphasizes preventing abuse of dominant position and protecting SMEs from predatory practices in both industrial and digital sectors.<sup>36</sup> Like Singapore, Malaysia does not focus solely on pricing, but also considers the economic and social impact of dominant market behavior on long-term competition.

The fundamental similarity between the two countries lies in a functional approach to predatory pricing—treating it not merely as a pricing issue but as a form of market power abuse that can threaten competitive structure and SME sustainability. Both CCCS and MyCC apply the As Efficient Competitor (AEC) principle in assessing whether dominant firm actions eliminate efficient competitors from the market.<sup>37</sup> They also demonstrate the ability to adapt competition law to digital economy dynamics, including data control, network effects, and algorithmic behavior. Accordingly, Singapore and Malaysia have positioned their competition authorities not only as ex-post enforcers, but also as ex-ante regulators that maintain digital markets as open, competitive, and inclusive for small and new businesses.<sup>38</sup> Thus,

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<sup>34</sup> Media Release PID in the Grab Uber Investigation. 2018. Retrieved October 14, 2025, <https://isomer-user-content.by.gov.sg/45/ff8126f1-124e-4af4-ac2a-00dd5ffc86ff/Media%20Release%20PID%20in%20the%20Grab%20Uber%20Investigation.pdf>.

<sup>35</sup> MyCC clears Megasteel of anti-competitive behaviour. 2016. The Edge Malaysia. <https://theedgemaalaysia.com/article/mycc-clears-megasteel-anti-competitive-behaviour>.

<sup>36</sup> Malaysia Competition Act 2010. 2016. Retrieved October 14, 2025, <https://www.mycc.gov.my/sites/default/files/Competition%20Act%202010%20-%2022092020.pdf>.

<sup>37</sup> Miroslava Marinova, 2025. *The As-Efficient Competitor Test: A Cornerstone or a controversy in EU Competition Law?*. GW Competition & Innovation Lab, <https://competitionlab.gwu.edu/efficient-competitor-test-cornerstone-or-controversy-eu-competition-law>.

<sup>38</sup> OECD, 2015. *Implementing Good Regulatory Practice in Malaysia*. OECD. <https://doi.org/10.1787/9789264230620-en>.

both Singapore and Malaysia show high institutional capacity to adapt regulations to digital dynamics, but global AI developments demand further reflection for Indonesia.

#### **d. New Challenges: Artificial Intelligence in Global Predatory Pricing**

Case studies from Singapore and Malaysia confirm that adaptive competition regulation can prevent predatory pricing and abuse of dominant position, while protecting SMEs from market foreclosure. Both CCCS and MyCC successfully integrate the As Efficient Competitor principle and adjust interventions to digital economy dynamics, including data control, network effects, and platform algorithm behavior.

However, global technological developments introduce a new dimension to predatory pricing. AI-based algorithms now allow large firms to automatically and dynamically set prices, creating more complex exclusion risks that are harder for traditional legal mechanisms to detect. This phenomenon challenges the effectiveness of existing regulations and requires new legal approaches capable of anticipating AI-enabled predatory pricing in digital markets. In this context, the following discussion highlights global challenges arising from AI misuse in predatory pricing, while framing it as an important consideration for Indonesia's competition policy formulation.<sup>39</sup>

Unlike traditional price-fixing practices, which require explicit agreements among firms, algorithmic collusion can arise without direct communication. AI systems observe competitors' pricing strategies and predict market responses. They then adjust prices automatically, creating price stability above competitive levels.<sup>40</sup> In this context, market coordination occurs between algorithms, not humans, with the goal of increasing profits and reducing competitive uncertainty.

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<sup>39</sup> Kapil Madan & Manas Sharma, 2023. *Can AI Control Predatory Pricing?*. *Geospatial World*. <https://geospatialworld.net/blogs/ai-predatory-pricing/>.

<sup>40</sup> Leaders League. 2025. *AI-Driven Pricing: An Emerging Frontier of Competition*. Leaders League. <https://www.leadersleague.com/en/news/ai-driven-pricing-gozde-diktas-allianz-commercial-munich>.

Several cases in the United States illustrate this complexity. In the RealPage case, courts rejected applying the per se rule, reasoning that algorithmic pricing recommendations alone were insufficient to constitute price-fixing.<sup>41</sup>

Similarly, in the MultiPlan case, healthcare service rate-setting algorithms were found capable of forming a hub-and-spoke conspiracy, where the algorithm provider acts as the hub and corporate clients act as spokes coordinating via the same system. This broadens antitrust law's understanding of new forms of collusion mediated by technology.<sup>42</sup>

Europe faces similar challenges. The German Federal Cartel Office introduced Section 32f of the Competition Act (GWB) in 2023, granting the authority to intervene even without evidence of traditional cartel activity, as long as a "significant and persistent market malfunction" from algorithmic coordination is observed.<sup>43</sup> Meanwhile, Italian competition authorities expanded jurisdiction to address algorithmic practices in the aviation sector after extreme dynamic pricing emerged. These jurisdictions signal a global shift: from proof-of-agreement-based approaches toward market malfunction monitoring caused by algorithms.<sup>44</sup>

The Amazon case in Germany is also noteworthy. Bundeskartellamt assessed that Amazon's Marketplace Fair Pricing Policy could lead to abuse of dominant position, as its algorithms could force third-party sellers to follow internally determined price limits.<sup>45</sup> Although no final decision exists, the case shows that algorithmic price control over third parties can produce exclusion effects equivalent to predatory pricing or abuse of dominance, even without direct human intent. Andreas Mundt, President of the German Federal Cartel Office, stated that "companies cannot hide

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<sup>41</sup> Office of Public Affairs, 2024. *Justice Department Sues RealPage for Algorithmic Pricing Scheme that Harms Millions of American Renters*. United States Department of Justice, <https://www.justice.gov/archives/opa/pr/justice-department-sues-realpage-algorithmic-pricing-scheme-harms-millions-american-renters>.

<sup>42</sup> King & Spalding Client Alert, 2025. *MultiPlan Algorithmic Pricing Antitrust Claims Survive Motion to Dismiss*. King & Spalding, <https://www.kslaw.com/news-and-insights/multiplan-algorithmic-pricing-antitrust-claims-survive-motion-to-dismiss>.

<sup>43</sup> Roman Inderst & Stefan Thomas, 2024. *Algorithms and Antitrust: A Framework with Special Emphasis on Coordinated Pricing*. Social Science Research Network (SSRN Scholarly Paper No. 4816287), <https://doi.org/10.2139/ssrn.4816287>.

<sup>44</sup> Leaders League., *Ibid*.

<sup>45</sup> Friederike Heine, 2025. *German cartel office criticizes use of price control mechanisms by Amazon*. Reuters, <https://www.reuters.com/sustainability/german-cartel-office-criticizes-use-price-control-mechanisms-by-amazon-2025-06-02/>.

behind algorithms,” indicating legal responsibility remains with firms even if decisions are made by automated systems.

AI has also changed the economic rationale for predatory pricing. Previously, the strategy was considered irrational due to difficulty targeting specific competitors and the impossibility of recouping short-term losses. However, as noted by Christopher Leslie (NYU Law Review), AI’s ability to analyze cost structures, consumer behavior, and optimal timing for price increases makes predatory pricing economically rational.<sup>46</sup> Similarly, Thomas Cheng and Julian Nowag highlight that algorithms enable more precise predation—such as customer-specific rebates and dynamic bundling—which are difficult to detect with traditional legal tools.<sup>47</sup>

Herbert Hovenkamp similarly argues that classic antitrust laws, such as the Sherman Act and Clayton Act, were not designed to address non-human entities. He emphasizes that while AI cannot be considered a legal subject, individuals or corporations using AI for illegal purposes remain accountable.<sup>48</sup> Edward Iacobucci of the University of Toronto adds that the more sophisticated AI becomes in price-setting, the harder antitrust law can intervene without negatively affecting innovation and efficiency.<sup>49</sup>

Therefore, AI-enabled predatory pricing presents not only technical but also conceptual challenges for regulators. Traditional competition law relies on proof of intent and agreements, whereas algorithms can perform exclusionary actions without either. This requires a paradigm shift from intent-based approaches toward effect-based assessments, as implemented in Germany and the EU. Globally, there is growing awareness that AI misuse in pricing can create silent monopolies — monopolies without human collusion. The OECD emphasizes the need for algorithmic transparency and technical capabilities for competition authorities to understand how market algorithms function. Developing cross-disciplinary

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<sup>46</sup> Christopher R. Leslie, 2023. *Predatory Pricing Algorithms*. New York University Law Review 98, no. 49, p. 49 – 111.

<sup>47</sup> Atinuke Lardner, et al., 2025. *Antitrust and Algorithmic Pricing*. The Regulatory Review, <https://www.theregreview.org/2025/07/12/seminar-antitrust-and-algorithmic-pricing>.

<sup>48</sup> Herbert Hovenkamp, 2024. *The Antitrust Text*. Social Science Research Network (SSRN Scholarly Paper No. 4277914), <https://doi.org/10.2139/ssrn.4277914>.

<sup>49</sup> Stephanie Assad, et al., 2024. *Algorithmic Pricing and Competition: Empirical Evidence from the German Retail Gasoline Market*. Journal of Political Economy 132, no. 3, p. 723 – 771, <https://doi.org/10.1086/726906>.

expertise in law, economics, and computer science becomes essential to keep digital market oversight relevant in the AI era.

In conclusion, these global lessons show that AI is not just a tool for efficiency but also a potential exclusionary instrument reshaping competition. For Indonesia, this underscores the importance of strengthening KPPU's capacity and expanding the legal framework to anticipate algorithmic abuse in digital pricing systems—not only through normative regulation but also by building transparent and accountable AI-based monitoring systems.

#### **e. Policy Recommendations for Indonesia**

The challenges posed by AI misuse in pricing underscore the need for updating Indonesia's competition law paradigm. Whereas legal oversight previously focused on human business actors, it now needs to extend to autonomous algorithmic systems. Global experience shows that advanced countries have adapted their legal approaches through effect-based assessments, increasing algorithmic transparency, and strengthening the capacity of regulatory authorities to understand AI's technical mechanisms. This paradigm shift is urgent for Indonesia, especially given rapid digital transformation that has expanded platform-based and data-driven business practices.

As one of the fastest-growing digital economies in Southeast Asia, Indonesia faces risks similar to other jurisdictions regarding potential market dominance abuse by large digital entities. Therefore, policy measures must be not only reactive but also preventive, through strengthening KPPU's mandate, updating the legal framework, and integrating digital surveillance technology. This policy approach is crucial to manage technological developments—including AI and automated pricing algorithms—without compromising healthy competition and protection of SMEs.

#### **Strengthening Competition Regulation in the Digital Era**

Learning from Singapore and Malaysia, two policy models can serve as references for Indonesia. Singapore emphasizes flexibility, offering incentives to tech companies to encourage innovation and digital investment, whereas Malaysia prioritizes protective measures through domestic industry empowerment and SME protection. A combination of these approaches can be adapted for Indonesia through four strategic steps: (1) expand KPPU's authority to monitor digital trade

practices and detect signs of algorithmic predatory pricing; (2) implement digital taxes on foreign service providers to create a level playing field with local actors; (3) enhance SME access to financing and digital capacity to remain competitive in online markets; and (4) streamline national logistics policies to reduce digital distribution operating costs.

Although these measures form a progressive regulatory foundation, the main challenge lies in enforcement effectiveness. Digitalization changes competition patterns, where pricing is now controlled by data- and algorithm-driven systems that are difficult to trace with conventional legal mechanisms. Therefore, Indonesia needs to develop AI-based monitoring systems capable of detecting suspicious pricing in real-time while providing digital forensic evidence for competition law enforcement.<sup>50</sup>

### **Control of Essential Inputs and Market Dominance Risks**

In the digital economy, market power abuse occurs not only through pricing but also via control of essential inputs—such as IT components and data.<sup>51</sup> Dominance over AI chips, cloud infrastructure, and large-scale data access can create entry barriers for new businesses. For instance, a dominant AI chip producer may practice exclusive rebates, refuse to supply critical components, or provide discriminatory treatment by delaying supply or raising prices for independent parties.<sup>52</sup>

Data control represents a new dimension of market power. Data is the fuel for AI systems, and entities with access to large datasets can develop superior AI models compared to competitors. This creates data-driven dominance, where large firms expand power not through innovation but by controlling strategic data and algorithms governing market behavior. Consequently, SMEs are not only less

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<sup>50</sup> Tim Publikasi Hukumonline, 2021. *Tantangan KPPU dalam Melaksanakan Fungsinya di Era Teknologi Informasi*. Hukumonline.com, <https://www.hukumonline.com/berita/a/tantangankppu-dalam-melaksanakan-fungsinya-di-era-teknologi-informasi-lt6135933663094/>.

<sup>51</sup> Australian Competition and Consumer Commission (ACCC), 2024. *Misuse of Market Power (Australia)*. <https://www.accc.gov.au/business/competition-and-exemptions/misuse-of-market-power>.

<sup>52</sup> James Mancini, 2020. *Abuse of Dominance in Digital Markets*. OECD, [https://one.oecd.org/document/DAF/COMP/GF\(2020\)4/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2020)4/en/pdf).



efficient but also lose the opportunity to compete on equal footing due to limited access to these digital resources digital tersebut.<sup>53</sup>

### **Tying and Bundling Practices as Abusive Conduct in the AI Era**

Beyond essential input control, tying and bundling are other forms of abusive conduct relevant in the AI context. Tying occurs when a dominant firm requires purchase of one product to obtain another, while bundling offers discounts only if consumers purchase products together.<sup>54</sup> In digital technology, such abuse can be contractual or technical. For example, a dominant software company may integrate its AI tools exclusively into a platform, preventing independent access by users.

A concrete example is the ongoing European Commission investigation into Microsoft. The inquiry found that the integration of Teams within Office 365 could violate competition law by restricting rival products.<sup>55</sup> In response, Microsoft offered commitments such as unbundling sales packages and improving interoperability for competitors.<sup>56</sup> This case highlights the importance of monitoring AI-based technology tying, which can create systemic dependencies and block market entry for new competitors.<sup>57</sup>

## **IV. CONCLUSION**

Indonesia's current competition regulation is still insufficient to respond to increasingly complex digital economy dynamics. Provisions in Law No. 5 of 1999 and Ministerial Regulation No. 31 of 2023 show an intent to protect small businesses, but lack adequate monitoring instruments and legal standards to address digital predatory pricing. Comparisons with Singapore and Malaysia demonstrate that successful digital market oversight depends on two factors:

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<sup>53</sup> WilmerHale, 2025. *Artificial Intelligence and Abuse of Dominance in EU Law*. WilmerHale, <https://www.wilmerhale.com/en/insights/blogs/wilmerhale-privacy-and-cybersecurity-law/20250722-artificial-intelligence-and-abuse-of-dominance-in-eu-law>

<sup>54</sup> Jay Pil Choi, et al., 2024. *Tying with Network Effects*. Toulouse School of Economics, n. 1524.

<sup>55</sup> The European Commission. (2023). *Commission opens investigation of practices by Microsoft*. European Commission - European Commission. [https://ec.europa.eu/commission/presscorner/detail/hu/ip\\_23\\_3991](https://ec.europa.eu/commission/presscorner/detail/hu/ip_23_3991).

<sup>56</sup> Paul Thurrott, 2025. *Microsoft Settles Office / Teams Bundling Case with EU*. Thurrott.Com. <https://www.thurrott.com/cloud/microsoft-365/326539/microsoft-settles-office-teams-bundling-case-with-eu>.

<sup>57</sup> WilmerHale, *Ibid*.

- 1) Institutional capacity of competition authorities, and
- 2) Integration with supportive economic policies, such as digital taxation, innovation incentives, and SME financing access.

Furthermore, the emergence of AI-enabled predatory pricing and algorithmic collusion reveals that intent- and agreement-based competition law is no longer sufficient. Indonesia therefore needs to adopt a new effect-based paradigm, develop a framework for algorithmic transparency, and build AI-based monitoring systems to preserve digital market integrity. These regulatory reforms will not only strengthen KPPU's role as a digital-era competition authority but also ensure that technology-driven economic growth proceeds in line with fairness, innovation, and sustainability principles.

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