



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

EXCESSIVE PRICING AS FROM OF ABUSE OF DOMINANCE: COMPARATIVE INSIGHTS FROM EU AND INDIAN LAW

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1. INTRODUCTION

Excessive pricing, a controversial aspect of competition law refers to the practice of major institutions that charge prices that are highly high and have no proper connections for the economic value of goods or services provided. While the competition law typically emphasizes promoting fair market practices and consumer welfare, regulating excessive pricing has been historically challenging. Under “Article 102 of the Treaty on the functioning of the European Union (TFEU)”¹, excessive pricing is recognized as the misuse of dominance. This provision, which is shown in the competition laws of several European Union member states, empowers competition agencies to investigate and punish institutions that incorrectly implement high prices. Despite this legal framework, enforcement officials, such as the European Commission and the National Competition bodies, are traditionally taken care of to carry out excessive pricing cases (Gupta et al., 2017).

This hesitation stems from the belief that competition agencies should give priority to address exclusion conduct - such as the obstacles of entry or hunter pricing in the market - which deforms the deformed competition directly rather than focusing on pricing results.² The justification is that high prices often attract new markets, naturally take down prices over time. However, excessive pricing enforcement is an important policy tool in protecting consumer interests, especially in markets where competition is limited or more admission barriers are more (Patil, 2023).

¹ “Consolidated Version of the Treaty on the Functioning of the European Union – Part Three: Union Policies and Internal Actions – Title VII: Common Rules on Competition, Taxation and Approximation of Laws – Chapter 1: Rules on Competition – Section 1: Rules Applying to Undertakings – Article 102 (ex Article 82 TEC), OFFICIAL JOURNAL 115, May 9, 2008, P. 0089-0089.”

² Flynn Pharma Limited v. Competition and Markets Authority and Pfizer Inc. v. Competition and Markets Authority, Nos. 1275-1276/1/12/17, [2018] CAT 11, at { 282 (hereinafter, Flynn Pharma Limited, [2018] CAT 11), https://www.catribunal.org.uk/sites/default/files/2018-08/1275-1276_Flynn_Judgment_CAT_11_070618.pdf.”

A historical case that has shaped the interpretation of excessive pricing in the European Union competition law is “United Brands Company vs. Commission (1978)”.³ In this case, the European Court of Justice (ECJ) set up a twice testing to assess high pricing claims. First, there should be a significant inequality between costs and charged prices by the major unit. Second, the price of the competition should be considered either inappropriate or compared to the prices fixed by the contestants.⁴

1.1. Economic and legal definition of "excessive" value

The concept of forming an "excessive" or "unfair" value remains elusive, with no universally accepted economic definition, even in theoretical discussions. For Marxist economists, the "fair price" of a product aligns with the labor value invested in its production (Marx and Engels, 1887). Similarly, classical economists support a cost-based assessment approach (Schumpeter, 1954).

In contrast, neo-classical economists argue that a "fair" value is determined by competitive market balance-the point where demand and supply intersection in a irregular market (Marshall, 1890). This interpretation is supported by Scholastic Economic Thought⁵ and Ordoliberal School, which affects the development of the “European Community (EC) completion policy”.⁶ Firms to determine prices as they were working in competitive terms Modern industrial organizations theorists provide a different perspective, define excessive prices that are much higher and frequent than competitive levels, resulting in the practice of market power (Tirole, 1988). However, despite these outlines, defines excessive prices are naturally unclear and somewhat circular.

The European Union courts have adopted an Ordoliberal-influential interpretation, which identifies excessive prices, which do not have any proper relations for the "economic value" of the product being sold.⁷ The primary challenge for competition authorities and courts lies in the difference between this "economic value" and “competitive yet high prices” and "it is important to identify excessive prices as regulatory intervention can significantly affect

³ “United Brands Company and United Brands Continentaal BV v. Commission of the European Communities, Case 27/76, 1978.”

⁴ *ibid.*

⁵ “JA Schumpeter, above, pt II, ch. 2.”

⁶ “Ch. 1 (Introduction, Scope of Application, and Basic Framework)”

⁷ “Case 27/76, United Brands Company v Commission [1978] ECR 250.”

consumer welfare”. As Fox, 1986 observed, “**Article 102 TFEU**” assumes that high prices are inappropriate, that high prices can be naturally improper, and the courts can recognize such prices, so that the courts can recognize such prices, and the courts can identify such prices, and the courts can recognize such prices. That judicial intervention is more effective than market forces in curing these distortions.

1.2. Purpose and Research question

The purpose of this research is to evaluate the European Union (EU) and the legal framework of India in addressing excessive pricing as abuse of dominance. The purpose of the paper is to assess the effectiveness of these frameworks in ensuring fair competition and protecting consumer interests by regulating excessive pricing practices. In this regard, research focuses on identifying excessive pricing, analyzing major judicial examples and understanding the economic and legal complications involved in investigating the enforcement system adopted in both courts. To achieve this objective, the paper critically examines the regulatory equipment available under “Article 102 TFEU” in the European Union and the “Competition Act, 2002” in India, highlighting major case laws and emerging trends. The study also examines market dynamics, innovation and excessive economic impact of excessive pricing regulation on consumer welfare.

To fulfill the purpose of this research, the following research questions will be addressed:

1. What are the economic and legal foundations of excessive pricing as a form of abuse of dominance?
2. How does the EU legal framework regulate excessive pricing under “Article 102 TFEU”, and what role do key judicial precedents play in shaping this framework?”
3. What are the legal provisions and enforcement mechanisms in India for addressing excessive pricing under the “Competition Act, 2002?”
4. How do the EU and Indian competition law frameworks compare in terms of identifying, assessing, and regulating excessive pricing?
5. What are the key challenges faced by competition authorities in effectively identifying and curbing excessive pricing, and what policy recommendations can improve regulatory outcomes?

2. ANALYSIS OF EXCESSIVE PRICING REGULATIONS

2.1. Economic Perspectives on Excessive Pricing

Economists describe excessive prices that are in the form of those who are largely and continuously above which will be considered a "competitive" level. In some industries, this competitive benchmark is often represented from the price that will be completely in the competitive market-a scenario where firms work as the price-takers and determine the price equal to the marginal or incremental cost of production. This pricing model is considered optimal because it attains two major capabilities: allocation efficiency, where all consumers are willing to pay equal to or above value, can get the product, and productive efficiency, where the production cost is minimal (O'Donoghue and Padilla, 2019).

In a fully competitive market, many firm goods and service provide demand for consumers, and production is usually operated under the terms of continuous or decreasing returns.⁸ Each firm faces highly elastic demand curve, which means they cannot maintain prices above marginal costs without losing customers. Any attempt to increase prices will motivate consumers to move to alternative suppliers, eventually financial loss to the firm. As a result, the "fully competitive" value is aligned with a short-term incremental cost of production-at which the market supply and demand are in balance (Parwani, 1988).

Economic theories offer diverse interpretations of constructing highly or improper value. These approaches play an important role in shaping the legal framework for excessive pricing regulation. While some principles emphasize labor value, others focus on competitive balance or market dynamics, each excessive pricing contributes valuable insight to the complex assessment of pricing (Jain, 2020).

2.1.1. Marxist Economic Principle: According to Marxist economists, a reasonable price matches the value of labor involved in the production of service⁹. This theory lies in the "*Labour Theory of Value*" of Karl Marx, suggests that exploitation occurs when the firms charge much higher prices from the labor cost, with the surplus price withdrawn. Although this perspective monopoly provides insight into price manipulation in monopoly markets, it lacks practical accuracy for modern competition authorities that are seeking to identify excessive pricing.

⁸ "That is, an increase in the use of inputs of X per cent (the scale of production) leads to an increase in output of X per cent (constant returns to scale) or less (decreasing returns to scale)."

⁹ "Karl Marx, *Das Kapital* (1867)."

2.1.2. Classical Economic Principle: Classical economists, such as Adam Smith and David Ricardo, emphasize a cost-based principle of value¹⁰. In this perspective, it has been claimed that prices should reflect the cost of production, including labor, materials, and capital. In this scene, any deviation from cost-based pricing may indicate excessive pricing. While this approach provides a clear base line to evaluate fairness, it struggles for dynamic factors such as innovation, product discrimination and consumer demand change.

2.1.3. Neo-classical economic theory: New-classical economists argue that "appropriate" value is a competitive market value, established through the natural interaction of demand and supply in a free market¹¹. The principle underlines the efficiency of competitive markets, where the firms have set prices close to marginal costs. Excessive pricing arises when monopoly or major firms distort these market forces to maintain inflated prices. The neo-classical perspective indicates many modern competition policies, as it emphasizes consumer welfare and allocation efficiency (Sinha and Gupta, 2015).

2.1.4. Ordoliberal theory: Originated by German economic consideration, Ordoliberal Theory claims that prices are "appropriate" when they resulted in independent and honest competition (Gerber, 2001). This perspective greatly influenced the development of the European Union competition policy, especially in defining excessive pricing under "Article 102 TFEU". Ordoliberals emphasize maintaining market structures that allow competition to flourish, rather than focusing only on consumer loss or price levels. As a result, the European Union courts have explained "excessive pricing" as a violation when there is no proper relationship for the economic value of the product in pricing of a firm.

2.1.5. Industrial Organization Theory: Within the industrial organization structure, modern economic theorists define excessive prices, which are much higher than the competitive level, the actual value is maintained by the market power of a firm rather than building. This principle incorporates various pricing models, when leading the major firms take advantage of their control to maintain inflated prices. Tools such as the Learner Index (a measure of pricing power) and value-to margin analysis are often employed to assess excessive pricing under this structure (Motta and Streel, 2016).

¹⁰ "Adam Smith, The Wealth of Nations (1776)."

¹¹ "Alfred Marshall, Principles of Economics (1890)."

2.1.6. Behavioral Economics and Excessive Pricing: Recent progress in behavior economics shows additional complications. Behavioral insights suggest that consumers can demonstrate irrational behavior, making them unsafe for price exploitation (**Thaler**, 2015). For example, firms consumers can use psychological strategies such as anchoring or drip pricing to maintain excessive prices without triggering the backlash. These strategies exploit cognitive prejudices, which further complicate the assessment of improper pricing practices.

2.1.7. Greed and Modern Debate: The recent economic discourse has introduced the concept of greed, where major firms have exploited inflation environment to increase prices, which can increase profit. This has focused on identifying excessive pricing in industries with limited competition, especially during economic crises. Critics argue that such pricing strategies have blurred the line between gaining valid benefits and derogatory dominance, faced challenges for regulators that demand to interfere without innovation or development (Weber, 2023).

2.2. Legal Interpretation of Excessive Pricing

The legal structure for excessive pricing has developed considerably over time, especially within the European Union (EU) and affecting the Indian Competition law as well. This development exposes the complexity of defines and regulating excessive pricing under competition laws.

2.2.1. United Brands Case and the Two-Fold Test

The Commission for the case of “United Brands Company vs. European Communities”¹² is seminal in the legal interpretation of excessive pricing of the European Union. In this historic judgment, the “European Court of Justice (ECJ)” established a two-tight test to identify excessive pricing under “Article 102 of the Treaty on the functioning of the European Union (TFEU)”. The test includes:

- **Price-Lagged Margin Evaluation:** This step involves determining whether the difference between the price charged by the major firm and its cost is excessive. The ECJ insisted that excessive price is one that has no proper relationship with the economic value of the product supplied.
- **Unfairness assessment:** Once a highly margin is installed, the next step is to assess whether the price is inappropriate, either in itself or when compared to competitive

¹² “United Brands Company v. Commission of the European Communities, Case 27/76, [1978] ECR 207.”

products. The ECJ said that if it either "unfair in itself" or "when compared to competing products" value can be considered inappropriate.

United Brands ruled that a value is considered derogatory, it should be both economically and inappropriate, ensuring that the firms are not punished only to charge high prices in the competitive market.

Case Study: United Brands Company vs Commission of European Communities

In this case, the "United Brands Company (UBC)" was a major supplier of bananas in Europe, which was primarily under the Chiquita brand. The UBC stopped its distributors from selling bananas that UBC did not make weekly pricing, charging high prices in various member states and made weekly pricing. The European Commission¹³ found the UBC behavior the opponent of competitive, which led to the establishment of the ECJ of twice testing for excessive pricing¹⁴.

2.2.2. Economic Value Assessment

Construction on the "United Brands Test", ECJ refined the concept of excessive pricing by linking it to the notion of "economic value" (Yakovleva, 2019). If it has no proper relationship for the economic value of the product or service provided, a value can be understood highly. Determining this economic value presents important challenges, as competition authorities should consider several factors, including:

- Production cost of firm
- Market status
- Prevailing industry standards
- Unique features of product or service

The complexity of defining the "economic value" provides the authorities quite prudent to determine what the given value crosses the threshold of addition (Motta and Streel, 2016).

2.2.3. Recent Developments in Excessive Pricing Regulation

A remarkable recent case exposing the complications of excessive pricing is 2023 BT Landline Pricing Case. The UK's "Competition Appeal Tribunal (CAT)" investigated whether a major telecom provider BT Group Plc had misused its major condition by charging high landline

¹³ "Id. at 251."

¹⁴ "Id. at 253."

prices. While CAT concluded that BT prices were really excessive, they eventually decided that these prices were not unfair and they did not misuse dominance. This decision only reflects high prices and complex differences between those who are illegally considered excessive (Fairless, 2023).

Case Study: BT Landline Pricing Case

In this case, BT Group PLC's landline pricing strategies were investigated. CAT's decision underlined challenges between high pricing and derogatory pricing, emphasizing the need for a fine approach in assessing allegations of excessive pricing.

2.2.4. Indian Legal Framework on Excessive Pricing

In India, the highly pricing comes under the broader category of exploitative conduct recognized by the “Competition Act, 2002”. While the Act identifies misuse of dominance, as anti-competitive behavior, it does not clearly define or provide a structured test for excessive pricing.¹⁵ However, the Indian courts and the “Competition Commission of India (CCI)” have often prepared guidance from the European Union jurisprudence, especially “United Brands” case, when excessive pricing concerns are addressed (Ganesh, 2022).

Case Study: Excel Crop Care Limited v. Competition Commission of India

In this case, the Supreme Court underlined the importance of assessing the economic value and consumer impact when investigating potentially exploited conduct. The court upheld the punishment imposed by the CCI on the “Excel Crop Care Limited” and to engage others into anti-competitive practices, including bid-rigging and collusive bidding, which led to unfair pricing in tenders for aluminum phosphide tablets.¹⁶

3. COMPARATIVE ANALYSIS: EU VS. INDIA

3.1. Similarities: Conceptual Overlap, Regulatory Intent, and Enforcement Focus

Both the European Union and India have embedded the principle of preventing excessive pricing within their competition law structure, focusing on focusing on consumer welfare security and ensuring market efficiency.

¹⁵ “The Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).”

¹⁶ “Excel Crop Care Limited v. Competition Commission of India, (2017) 8 SCC 47 (India).”

- **Concept Overlap:** The EU's “Article 102 of the Treaty on the Functioning of the European Union (TFEU) and India's Competition Act, 2002” recognize exploitative pricing as possible misuse of exploitation.¹⁷ Both the jurisdictions emphasize assessing economic value and consumer loss when determining excessive pricing (Davis and Mani, 2018).
- **Regulatory intentions:** The European Union and Indian authorities attempted to balance inappropriate pricing and to balance innovation and discouraging overregulation (Yakovleva, 2019).
- **Enforcement Focus:** “European Commission (EC)” and “Competition Commission of India (CCI)” assess high pricing cases based on the power, cost analysis and consumer impact of the market (Motta and Streel, 2016).

For example, in the United Brands case, ECJ underlined that an excessive price is what does not have any proper connection to the economic value of the product. Similarly, in the Excel crop care case, the Supreme Court of the Indian Supreme Court emphasized the need to analyze the loss of the consumer when investigating the exploitative pricing.¹⁸

3.2. Differences: Judicial Interpretation, Assessment Criteria, and Procedural Variations

Despite the general objective of preventing excessive pricing, the European Union and the Indian structures vary greatly in legal interpretation, evaluation methods and procedural structure.

- **Judicial Interpretation:** The European Union adopts a structured two-fold testing from the case of joint brands, assessing both (a) “whether the price-cost margin is excessive” and (b) “whether the price is unfair in itself or relative to competitors”.¹⁹ In contrast, Indian courts rely on extensive interpretations, assessing economic values, market structure and consumer losses.
- **Assessment Criteria:** European Union officials lay significant emphasis on cost-based benchmarks and economic value assessments. Indian officials, however, often rely on circumstantial evidence such as market dominance, consumer losses and pricing trend over time.²⁰

¹⁷ “United Brands Company v. Commission of the European Communities, Case 27/76, [1978] ECR 207.”

¹⁸ “Excel Crop Care Limited v. Competition Commission of India, (2017) 8 SCC 47 (India).”

¹⁹ “United Brands Company v. Commission of the European Communities, Case 27/76, [1978] ECR 207.”

²⁰ “In Re: Fx Enterprise Solutions India Pvt. Ltd. v. Hyundai Motor India Limited, Case No. 36/2014 (CCI).”

- **Procedural Variations:** The European Union investigation often involves comprehensive economic analysis and cooperation with industry experts. In contrast, the Indian inquiry emphasizes a more streamlined, document-based approach. The CCI has more flexibility in designing treatments, including behavior and structural intervention (Maan, 2024).
- **Case Study:** In the *AKZO Chemie BV v. Commission* case, ECJ defined excessive pricing based on cost-value analysis, which establishes an important example for future matters.²¹ In contrast, *Re: FX Enterprise Solutions in India Private. Ltd.*, CCI adopted a more flexible approach, which depends a lot on market evidence and consumer impact rather than rigorous cost-value formulas (Khan and Baral, 2024).

3.3. Lessons from Each Jurisdiction: Identifying Best Practices and Potential Improvements

Both legal structures provide valuable insight to refine excessive pricing regulation:

- **Best practice from European Union:** The European Union's structured two-fold test provides clear guidance to determine excessive pricing. ECJ's dependence on cost-value analysis ensures transparency and limits arbitrary enforcement (Whish and Bailey, 2021).
- **Best practice from India:** The flexible and practical approach of the CCI allows for a quick solution of cases, especially in emerging markets where cost-data can be incredible. Indian model also encourages active consumer protection strategies (Weber, 2023).
- **Potential Improvements:** To better address the European Union digital markets and develop business models, India's flexible evaluation methods can benefit from integrating consumer behavior analysis. In contrast, India can adopt a clear legal test to improve predictions in high pricing cases (Kaur, 2021).

4. CONCLUSION

The investigation overcharging as a lever of domination abuse reveals that both the European Union (EU) and India have developed proactive legal mechanisms for the prevention of consumer exploitation and ensuring healthy competition. The EU's jurisprudence as well as the established United Brands test has a systematic approach for evaluating excessive pricing

²¹“ *AKZO Chemie BV v. Commission*, Case C-62/86, [1991] ECR I-3359. “

by combining price-cost margins ratio with an unfairness examination. On the other hand, competition law in India is relatively more liberal by focusing on the broader shifts in the market, consumer harm, and economic value without being bound to a legal test. While the EU model is more straightforward and coherent, the Indian framework provides flexibility amidst consistency; making it more responsive to ever-changing market conditions. These different approaches call for the relative pricing policies of both regions to be done in a manner that does not place too much burden on the legitimate business activities.

Insights gained from analyzing the EU and Indian frameworks offer lessons for modifying excessive pricing regulation. In the EU, the cost-value approach assists in identifying abusive practices, and in India, the lax enforcement approach provides context for flexible called for in developing economies. In both regions, the integration of these approaches could improve combating excessive pricing in new industries, such as digital services and essential goods. Through the adoption of both models' greatest strengths, a comprehensive framework that fosters competition in the market while protecting the interest of consumers will be instituted, preventing undue sanctions as well as the exploitation of monopolistic positions.

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