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EXCESSIVE PRICING UNDER EU JURISPRUDENCE:

EVOLUTION, ANALYSIS AND PROSPECTS

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Abstract

In the field of competition law, excessive pricing is a topic of heated controversy. Excessive pricing may take various shapes, but it always involves setting prices that are out of line with the current market. The European Union has been quite public about its displeasure with what it sees as excessive pricing practices. The EU is using its jurisprudence to tighten down on businesses, and the DB case is only one example. For a number of years, the issue of excessive pricing has been a major talking point in the European Union. This study was an attempt to shed light on the examination of exorbitant pricing, and it was a qualitative one at that. Findings from this study show that the European Commission has proposed a new anti-trust legislation that, if enacted, would provide EU authorities the right to take legal action against cartels suspected of illegally increasing drug prices. This study argues that European Union competition law should still apply in some circumstances when prices are clearly exorbitant. United Brands uses a two-stage evaluation process to determine why prices are so high. Instead of looking for a huge profit margin, the first thing to do is make sure the prices are excessive on the face of it. Using this criterion, competition authorities should consider the product's cost in relation to its economic value.

Introduction

In competition law, excessive pricing is a hotly debated issue. However, the rule against excessive outrageous both practical and ideological problems, despite the fact that outrageous pricing by a dominant business is one of the most obvious ways corporations may abuse customers and generate inefficiencies that competition laws are supposed to avoid [1][1]. These concerns motivate the policy position that unfair pricing practices are not covered by antitrust regulations. To put it another way, they encourage law enforcement to avoid using excessive pricing regulations. While the United States and Europe have theoretically different antitrust regimes (the former opposes intervention, while the latter punishes high or unjust pricing), in practice, a non-intervention strategy has been championed in most countries globally in recent years. The view that an interventionist approach might reduce investment incentives and the practical challenges associated with assessing excessiveness provide support for this perspective, as can the observation that markets tend to self-correct [2][2].

The European Union (EU) is a treaty-based economic union of 28 member states. The EU has its own legal system, separate from that of each individual member state. This means that actions taken by the EU as an organization can be subject to different legal constraints than those applied by individual member states. One such area where this is particularly relevant is

[1] Lanza, E. M., & Sfasciotti, P. R. (2018) Excessive price abuses: the Italian Aspen case. *Journal of European Competition Law & Practice, 9*(6), 382-388.

[2] Ezrachi, A., & Gilo, D. (2009a) Are excessive prices really self-correcting? *Journal of Competition Law and Economics, 5*(2), 249-268.

pricing practices - specifically, whether certain prices are considered "excessive" under EU law [3][3].

In most OECD countries and particularly under EU competition law, it is an antitrust violation when a dominant corporation charges prices that are excessive in comparison to a sufficient competitive benchmark. The dominating firm's mere exploitation of its clients may be enough to constitute a breach without causing any real harm to the competitive process. Excessive pricing can take many forms, but at its core, it refers to price levels that are either too high relative to market conditions or too consistent with the exploitation of market power [4][4]. In recent years, the EU has become increasingly vocal about its concerns over pricing practices that it views as excessive. One such case involved Deutsche Bank AG (DB), which was fined €2 billion by the European Commission for engaging in "abusive collusions" with other banks to manipulate global interest rates. In a scathing statement, the EC said that DB's actions had caused "massive damage" to consumers and investors across Europe. The DB case is just one example of how the EU is using its jurisprudence to crack down on firms. Excessive pricing has been a hot topic in the EU for several years now, with regulators becoming increasingly vocal about their concerns over high prices. One of the main ways that the EU tackles excessive pricing is by using its competition law provisions - specifically, Articles 102 and 103 of the Treaty on European Union (TEU). These articles prohibit cartels and abusive practices such as price fixing. The EC also uses its antitrust regulatory powers to intervene

[3] Abbott, F. M. (2022) Excessive Pricing Doctrine in the Pharmaceutical Sector: The Space for Reform. *Edward Elgar*.

[4] Vásquez Duque, O. (2015) Excessive pricing: A view from Chile. *The University of Oxford Centre for Competition Law and Policy. Working Paper CCLP (L), 41*.

where it believes there is evidence of anti-competitive behavior. In cases where firms have engaged in anticompetitive actions, fines can be hefty [5][5].

While excessive pricing is not expressly mentioned in EU law, it is an important area of enforcement for the Brussels-based regulator. Consequently, any abusive or anticompetitive pricing practices that fall within the EC's ambit should be carefully scrutinized. The EU is also increasingly using its antitrust authority to intervene where it believes there is evidence of anti-competitive behavior. In cases where firms have engaged in anticompetitive actions, fines can be hefty. For instance, in 2017, the EC penalised Google €2.7 billion over abusing their dominance in internet search by favouring one's own offerings over those offered by rivals. This type of penalty sends a strong message to companies that Antitrust enforcement remains a top priority for the EU. This type of enforcement is likely to continue, as the EU continues to grapple with issues such as excessive pricing. Given the seriousness of these violations, companies that are caught engaging in anticompetitive behavior could face hefty fines and significant consequences for their business [6][6].

The EU's antitrust laws may be broken in a variety of ways by businesses. The most common form of antitrust infringement involves cartel behavior - where firms agree to fix prices and share market share, in an effort to restrict competition. Other violations may include abuse of market power, where a company uses its dominant position to unfairly restrict the

[5] Ezrachi, A., & Gilo, D. (2009a) Are excessive prices really self-correcting? *Journal of Competition Law and Economics, 5*(2), 249-268.

[6] Jenny, F. (2018) Abuse of dominance by firms charging excessive or unfair prices: An assessment. *Excessive pricing and competition law enforcement*, 5-70.

supply or demand for goods or services on the market. Fines for such activities can be substantial and may have far-reaching consequences for the businesses involved [7][7].

Given the severity of these penalties, it is important that companies understand their obligations under EU antitrust law and take appropriate steps to avoid violating these regulations. If organizations are aware of any antitrust violations happening within company, it is important to contact the authorities as soon as possible. Therefore, the current research is intended to provide a snapshot of excessive pricing under EU jurisprudence: evolution, analysis and prospects [7][8].

1.1. Background

1.1.1. Welfare and Markets; The Policy

Since free markets may increase everyone's well-being, they are essential to today's economies for producing and distributing goods and services. The productive, distributive, and dynamic efficiencies of a society are often greatly enhanced by the introduction of a market economy. However, without competition, markets might provide efficient outcomes. If this is

[7] Svetlicinii, A., & Botta, M. (2012) Article 102 TFEU as a tool for market regulation:"Excessive enforcement" against "excessive prices" in the new EU member states and candidate countries. *European competition journal, 8*(3), 473-496.

[8] Svetlicinii, A., & Botta, M. (2012) Article 102 TFEU as a tool for market regulation:"Excessive enforcement" against "excessive prices" in the new EU member states and candidate countries. *European competition journal, 8*(3), 473-496.

the case, it is because some companies have a disproportionate amount of influence in the market and are thus able to raise prices and decrease supply [8, 9][9].

According to the Scherer and Ross [10] governments can either (1) regulate markets before the anti-competitive behaviour of market power before (ex ante) or after (ex post) the fact by protecting the process of competition in the hopes that market forces would ultimately reduce monopolistic position . This divide is crucial to the divergence between competition law and competition regulation. The former is often understood to be a sort of indirect regulation, with the goal of protecting the process of competition and increasing consumer welfare. When compared to this, economic regulation is often thought of as the direct economic monitoring of market power. Both approaches deal with the problem of monopolistic power, but they do so in different ways and may have varying effects [10, 11][10].

Each instrument is a separate and distinct legal tool for monitoring the market. The scope of antitrust legislation should be confined to preventing the illegal accumulation or use of market power [12][11]. When it comes to market architecture, regulations that overshoot the market by dictating their desired outcome are justified. Regulatory requirements as well as the subsequent enforcement and surveillance of those benchmark tests would often incur no negligible costs, so it may be socially beneficial to leave this same adjustment from certain

[9] Baldwin, R., Cave, M., & Lodge, M. (2011). *Understanding regulation: theory, strategy, and practice*: Oxford university press.

[10] Nazzini, R. (2011). *The foundations of European Union competition law: The objective and principles of Article 102*: Oxford University Press.

[11] Pindyck, R. (1989). S. and Daniel Rubinfeld. Microeconomics: New York: Macmillan Publishing Company.

market inefficiencies to the economy itself, whereas regulating big market failures often including utilities to natural monopoly features [12, 13][12].

Lemley [13] argued notably, opting to let market forces effect change presumes that established market leaders may be dislodged by the emergence of new rivals. However, until a company has strong and lasting market dominance, the idea that it may charge whatever it wants at monopoly prices is false. In addition, the projected post-entry price attracts customers regardless of whether their pre-entry price was too high or low. The preeminent theory of contestable markets ignores this nuance by supposing that established firms would not quickly lower their pricing in response to new entrants. So, what should be done when there is a regulatory failure or when market failures affecting a low organization that does not necessitate ex-ante regulation? Therefore, the issue at hand is whether, in exceptional cases when social welfare is at stake, antitrust legislation should be used instead of regulation to curb the abuse of market dominance. Theoretically, two solutions have surfaced. However, in the United States, antitrust law isn't seeing price gouging as a crime in and of itself. However, as according European Competition Law, charging exorbitant rates might be seen as unfair and an abuse of power [13][13].

Different perspectives on what constitutes excessive pricing are the result of a significant chasm in the scope of antitrust legislation between the United States and Europe

[12] Lemley, M. A. (2006) A new balance between IP and antitrust. *Sw. JL & Trade Am., 13*, 237.

[13] Lemley, M. A. (2006) A new balance between IP and antitrust. *Sw. JL & Trade Am., 13*, 237.

[11][14]. Indeed, prior research has focused as to how monopoly is formed when condemning "monopolisation," whereas the latter condemns an improper application of monopoly power that may be seen as "abusive." European Competition Law, in contrast to American Antitrust Law, prohibits not only conduct that leads to monopolies but also conduct that restricts competitors or exploits consumers. Such dissimilarity results from the use of underlying assumptions that are radically different from one another [14][15].

European competition law takes the position that market imperfections are not always corrected by market forces. Because of this, Competition Law may be the most effective strategy for mitigating the negative effects of monopolistic dominance. However, American antitrust legislation is grounded in a premise that places more faith in the market, that market forces are powerful enough to undermine monopolies without any outside interference. Even if economic forces were insufficient, courts are not an appropriate venue for setting prices [15][16].

However, in reality, you won't notice this difference. Even if Art. 102 TFEU's language and case law give a foundation for involvement, actual European enforcement experience, at both the regional and national levels, suggests a tiny number of cases of exorbitant pricing [14][17]. Because of "the difficulties faced in showing the overdramatization of the price, this

[14] Nazzini, R. (2011). *The foundations of European Union competition law: The objective and principles of Article 102*: Oxford University Press.

[15] Breyer, S. G. (2021). Regulation and its Reform *Regulation and Its Reform*: Harvard University Press.

[16]Whish, R., & Bailey, D. (2021). *Competition law*: Oxford University Press.

[17] Breyer, S. G. (2021). Regulation and its Reform *Regulation and Its Reform*: Harvard University Press.

same belief that inordinate price increases are essentially self, and indeed the anxiety that restriction risks chilling opportunities to invest," as Ezrachi and Gilo put it, "there are relatively few instances in which this policy has been applied." However, regulators and policies have acknowledged that exorbitant price situations may make sense in specific scenarios [16][18].

According to the Areeda, Kaplow [17][19], the argument against overcharging is convoluted. There are a number of compelling reasons why an intervention analysis is necessary. Misconceptions about the value of antitrust action, however, often drive a policy of non-intervention. Ideological tensions arise from discussions about antitrust involvement in a way that is seen to promote quasi-regulatory aims, such as a restriction of excessive pricing. For this reason, a well-rounded study is especially useful for smaller economies, where market self-correction mechanisms are less reliable. Managing the many real-world obstacles to antitrust action is no easy task. The philosophical reasons that tend to emphasize the former, however, need to be distinguished from the real challenges that exist. Furthermore, competition authorities may investigate alternative measures for improving market outcomes even when strict enforcement is not deemed the proper instrument for resolving excessive price claims.

[18] Dunne, N. (2014) Between competition law and regulation: hybridized approaches to market control. *Journal of Antitrust Enforcement, 2*(2), 225-269.

[19] Areeda, P. E., Kaplow, L., Edlin, A. S., & Hemphill, C. S. (2021). *Antitrust analysis: problems, text, and ca;ses*: Wolters Kluwer Law & Business.

The protection and development of competitive markets, in fact, need a variety of enforcement tools beyond simple post-hoc checks on market concentration [14, 17][20].

1.2. Problem Statement

The research problem that this project seeks to address is the evolution of antitrust enforcement under EU law and what prospects for future growth exists. The specific aim of the project is to provide a snapshot of excessive pricing under EU jurisprudence, analysis and prospects. EU antitrust law has been in place for over 40 years, and during that time there has been an evolution in how the Commission examines inappropriate price behavior. In recent years, antitrust enforcement has focused more on predatory pricing tactics where companies take advantage of their market position to drive up prices beyond what would be necessary to cover costs. There are a number of reasons for this increase in enforcement activity [11][21]. One reason is that there has been an increase in economic inequality, which has led to more cases of price gouging by large companies. In addition, the internet and other technological changes have made it easier for competitors to reach consumers across borders, leading to increased scrutiny of pricing behavior that takes advantage of geographic divisions. Finally, the internationalization of business means that cartels and monopolies can no longer rely on barriers to entry (such as limited access to raw materials) as a way to maintain their market shares unchallenged. Excessive pricing is a term that has been used in the EU to describe

[20] Areeda, P. E., Kaplow, L., Edlin, A. S., & Hemphill, C. S. (2021). *Antitrust analysis: problems, text, and ca;ses*: Wolters Kluwer Law & Business.

[21] Nazzini, R. (2011). *The foundations of European Union competition law: The objective and principles of Article 102*: Oxford University Press.

activities where prices are raised beyond what is necessary to cover costs. The Commission's Antitrust Guidelines state that excessive pricing can be defined as "a price which exceeds the cost of production or fair value, or both." The Commission usually considers the following three criteria when deciding whether such a price is excessive: profitability; efficiency; and intensity of competition. While there is some variation across countries within the EU with regards to how these factors are applied, all three criteria play an important role in determining whether a price falls within the range [7][22].

The issue to be highlighted in the current sense of literature is antitrust enforcement under EU law. Recent years have seen an increase in scrutiny of pricing behavior that takes advantage of economic inequality and technological changes, which has led to more cases being brought before the European Commission. The current peace of research is an effort to make a snapshot of excessive pricing under EU jurisprudence. The purpose of this literature study is to provide an overview of antitrust enforcement in the European Union and discuss how recent changes in the Commission's approach to price scrutiny may have impacted current practice. It should be noted that this paper does not intend to make a comprehensive evaluation or assessment of the merits or drawbacks associated with various antitrust enforcement techniques employed by the Commission; instead, it seeks only to provide a comprehensive

[22] Svetlicinii, A., & Botta, M. (2012) Article 102 TFEU as a tool for market regulation:"Excessive enforcement" against "excessive prices" in the new EU member states and candidate countries. *European competition journal, 8*(3), 473-496.

overview on what has been happening with regard to price gouging over the past few years within EU law [1][23].

1.3. Aims and Objectives

The ultimate objectives of this literature study are to provide an overview of antitrust enforcement in the European Union and discuss how recent changes in the Commission's approach to price scrutiny may have impacted current practice. Additionally, the study aims to identify any potential shortcomings or challenges associated with using antitrust enforcement as a tool for addressing excessive pricing.

1.4. Summary

This literature review provides an overview of antitrust enforcement within the European Union over the past few years, discussing how changes in Commission policy has impacted current practice. While there are some limitations associated with using antitrust law as a tool for combating price gouging, it appears that the approach taken by the Commission has generally been successful in deterring companies from engaging in conduct that results in exaggerated prices.

1.5. Significance of the Research

This literature study provides a comprehensive overview of antitrust enforcement in the European Union, discussing how recent changes in Commission policy has impacted current

[23] Lanza, E. M., & Sfasciotti, P. R. (2018) Excessive price abuses: the Italian Aspen case. *Journal of European Competition Law & Practice, 9*(6), 382-388.

practice [3][24]. This information will be valuable to scholars and practitioners interested in understanding how EU antitrust law is used to address issues related to price gouging. The current research will employ implications for future antitrust enforcement actions, highlighting any potential shortcomings or challenges that may exist. These challenges can help shape future policy decisions in order to improve the enforcement of antitrust law, which in turn would help managing the excessive pricings and unfair business practices that can inhibit the economy. Overall, this literature review provides a valuable overview of the current state of excessive pricing under EU jurisprudence [3, 5][25].

[24] Abbott, F. M. (2022) Excessive Pricing Doctrine in the Pharmaceutical Sector: The Space for Reform. *Edward Elgar*.

[25] Ezrachi, A., & Gilo, D. (2009a) Are excessive prices really self-correcting? *Journal of Competition Law and Economics, 5*(2), 249-268.

Chapter II. Literature Review

2.1. Introduction

The current chapter discusses the already existing literature on the study constructs such as excessive pricing under EU jurisprudence: evolution, analysis and prospects.

2.2. Principles from the case-law

2.2.1. Dominant position

According to Article 82(a) of both the Treaty, a monopoly firm may not "impose exorbitant purchasing or selling prices and other unfair trading conditions." If an organization commands such high levels of client loyalty and purchasing behavior, it is regarded as dominating in its industry. Since Article 82 is worded so broadly, it is the obligation of any dominant corporation to avoid charging exorbitant prices [18][26]. With the landmark case of Parke Davis, the Court of Justice first clearly established this concept, and it has consistently maintained this position ever since [18].

2.2.2. Abuse: Which price is excessive?

If a price is far more than the going rate, it is considered excessive.

According to Joliet [19], a price is unjustified if dominant enterprises use their market power to charge much more than they would under effective competition. A price is considered exorbitant if it is much higher than the level at which competition would be minimal [18, 20][27].

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[26] Kauper, T. E. (1990) The Justice Department and the Antitrust Laws: Law Enforcer or Regulator? *The Antitrust Bulletin, 35*(1), 83-122.

[27] Evans, D. S., & Padilla, A. J. (2005) Excessive prices: Using economics to define administrable legal rules. *Journal of Competition Law and Economics, 1*(1), 97-122.

The Court of Justice agreed with this line of thinking in the case of United Brands, when it ruled that:

> The dominating enterprise should be investigated to see whether it has taken advantage of its market power to gain an economic advantage that would not exist in a market with regular, adequately effective competition.
>
> Specifically, it would be unfair to charge an inflated price that has no connection to the product's actual worth.

When a price is far more than what the market would bear, we say that it is unjust. The Commission defines competitive pricing as the minimal average prices in the Guidelines on vertical constraints. In fact, businesses cannot operate at a price below average costs since doing so would leave them unable to pay fixed expenses. For instance, in highly competitive markets with substantial investment as well as network effects, pricing well above the equilibrium price of the winning company is required [19][28].

In United Brands, the Court was flexible in its approach to determining what constitutes sufficient evidence to establish that a price was exorbitant:

> If the difference between the product's selling price and its manufacturing costs could be quantified, then the size of the profit margin could be estimated objectively.
>
> Economists have come up with other alternative methods for deciding whether or not a product's pricing is unjust.

[28] Joliet, R. (2006) Disparities in geographic performance: some effects on the cost of capital and the payout policy. *Available at SSRN 914121*.

The Court has, in fact, developed a virtual cocktail of approaches for determining whether such a price is excessive over time, as illustrated in Table 1 below. In reality, it is feasible to establish that a pricing is excessive by comparing it with numerous indications, such as the dominating business's cost measures, other prices issued by the dominant company, or the fixed prices by other firms selling things comparable to the one over consideration [20][29].

Table 1: Consistently inflated prices that were clearly set to exploit

	Cost of the dominant firm	**Other prices of the dominant firm (Discrimination)**	**Price of other firms offering similar products**
Same relevant market (product and geographic)	*United Brands 1978* *CICCE 1985* *SACEM II 1988* *Ahmed Saeed 1989*	---------	(Competitor comparison) *United Brands 1978* *Parke Davis 1968* *Renault 1988*
Other relevant market in the same Member State	--------	*General Motors 1975* *British Leyland 1986*	*General Motors 1975* *Bodson 1988*
Other relevant market in another Member State	---------	*United Brands 1978*	(Benchmarking) *Sirena 1971* *Deutsche Grammophon 1971* *SACEM I 1989* *SACEM II 1989*

2.2.3. Excessive pricing

Under European Union and Organization of Economic Cooperation as well as Development antitrust regulations, it is illegal for a market leader to charge much more than their competitors do for the same product or service (OECD). There is no need of real harm to competition for the infringement to be found; rather, the dominant firm's exploitation of its consumers is enough to prove the violation. When evaluating the dominant firm's pricing strategy, it is useful

[29] Evans, D. S., & Padilla, A. J. (2005) Excessive prices: Using economics to define administrable legal rules. *Journal of Competition Law and Economics, 1*(1), 97-122.

to compare it to a competitive benchmark that contains either an acceptable measure of costs or a lower price paid in a setting analogous to the dominant firm's conditions [21][30].

2.2.4. The EU's international influence in competition law and policy

Bilateral enforcement normally required (like the Expression) are highly beneficial, but fail to give complete remedies to international practises that impede competition, as pointed out in a research on the international component of EU competition strategy. With only its most significant economic partners having signed such agreements, the European Union (EU) has instead prioritised other forms of cooperation, such as bilateral trade deals (which include a chapter on competitive market provisions) as well as negotiations on cooperation negotiations on competition law and policy, where it can exert greater influence. The European Union (EU) has used bilateral trade agreements to export its competitive market model to something like a number of countries that participated and trade partners; these agreements are much closer to international "hard law" (based on precisely formulated as well as legally binding responsibilities) than reciprocal enforcement agreements. The success of these regimens ultimately hinges on how well they are put into practice [22][31].

The European Union (EU) model of regional cooperation (more centralised) seems to be the norm, while the NAFTA model (more voluntary) is more the exception. However, the scope of the clauses in these contracts varies widely, with just a small number of agreements addressing mergers, State assistance, or abuse of power. As a result, the European Union's (EU) global clout and priority have waned (such as within the WTO). And there is some indication

[30] Vásquez Duque, O. J. T. U. o. O. C. f. C. L., & CCLP, P. W. P. (2015) Excessive pricing: A view from Chile. *41*.

[31] Abbott, F. M. J. A. a. S. (2023) Prosecuting Excessive Pricing of Pharmaceuticals under Competition Law: Evolutionary Development.

that the EU has a worldwide impact on competition authorities trying to modernise or establish new regulations. Many of them have looked to European rather than American principles for help, citing things like specific Commission directives and block exemptions, comprehensive rulings that are publicly accessible, and the expanding case law from European courts as sources of authority. These ideas have had an impact on both the content and procedure of the law in numerous of these countries. Since the international component of competition policy is relatively new, it seems that binding multilateral competition arrangements will take time to evolve and that the degree to which the EU has influence varies greatly depending on the kind of agreement.

2.3. Profitability analysis and manufacturing expenses comparison

United Brands Corporation (UBC) split the common market in two by charging ripeners/distributors in different Member States different prices for its "Chiquita" branded bananas and prohibiting the distributors from reselling its bananas. The Commission found that the prices on some continental marketplaces were excessive for three reasons: prohibitions on resale, a lack of willingness to bargain, and discriminatory tactics. Two things made these prices unreasonable: (1) they were still at least 100% greater than the price practised on the Irish market, something that UBC might have conceded that were not loss making; and (2) they were 20-40% greater than the costs of unbranded bananas on the countries make, even taking into account that buyers were charging for the brand.The Commission fined UBC 1 MEUR and said a 15% price cut would fix the problem [2][32].

[32] Ezrachi, A., & Gilo, D. (2009a) Are excessive prices really self-correcting? *Journal of Competition Law and Economics, 5*(2), 249-268.

The Court of Justice ruled in an appeal that:

Therefore, it is necessary to ascertain if the price charged is much higher than the expenses incurred and, if this is the case, whether a price has been imposed that is unjust either on its own or in relation to similar items on the market.

At the very least, it was the Commission's responsibility to demand that UBC break out every single cost component of its manufacturing.

With these principles in mind, the Court reversed the Commission's unfair pricing determination because of insufficient evidence. First, the Commission didn't even try to assess the price of banana production, even though the UN Conference for Trade and Development published a report in 1975 demonstrating that it was feasible to do so. The Commission did not even ask UBC to provide its pricing information. The second issue with the Irish pricing being used as a standard is that it is not entirely obvious whether this price is profitable. Finally, a difference of 7% compared to the top rivals could not be considered excessive [23][33].

Faull and De Streel [24], A two-pronged approach has been employed, you say, using Court's own words: first, a cost/price assessment; second, an inquiry into whether the pricing is exorbitant on its own or in contrast to competitors' products. Researchers argue, however, that they are not necessarily complementary, since they both seek to show the same thing—namely, that the price is much higher than the competitive level. They also advise the Court to prioritise an up-front cost estimate above other kinds of evidence. The appropriate authorities should make all possible efforts to collect price information on the allegedly excessive rates. If obtaining this information becomes impractical or if further information is required to enhance

[33] Clark, J. M. (1940) Toward a concept of workable competition. *The American Economic Review*, 241-256.

a cost analysis, the authority may choose to look at prices charged by competitors and, more generally, compare the prices at issue with specified benchmarked rates [24][34].

The Court of Justice improved the method of weighing benefits against costs in later instances. The Court in CICCE threw out a lawsuit against the Commission for failing to criticize the unjustly low price paid by French television firms (at the time, a monopolist) to screen movies. The Commission concluded that, owing to the substantial variation in costs and fees amongst the films, Using a single figure for production costs and another for sales revenue was misleading. The court agreed with this method and upheld the case. That's why you shouldn't settle for the mean when two goods are otherwise comparable but have distinct pricing models [25][35].

Since the dominant business is more likely to report inflated production costs, the Court in SACEM II ruled that the production costs of an efficient firm should be utilised instead (X-inefficiency). Since the lack of competition in the market sector may be the real reason for the high manufacturing costs, the Court ruled that the corporation could not use them to justify its discriminatory pricing.

Last but not least, the Court dealt with the problem of how to divide up the shared expenses of many services in Amin, Tareen [26]. The Supreme Court, in obiter dicta connected to a preliminary judgement case involving airline tariffs, said that:

[34] De Streel, A. (2006) Exploitative and exclusionary excessive prices in EU law.

[35] Cramton, P. (2004). *Competitive bidding behavior in uniform-price auction markets.* Paper presented at the 37th Annual Hawaii International Conference on System Sciences, 2004. Proceedings of the.

The criteria to be followed by the aviation authorities for authorizing tariffs may be derived from, which really provides some interpretive criteria for determining whether the rate used is excessive. In particular, it appears that tariffs must be sanely related to the long-term fully connection with the implementation of the airline, while also considering the demands of consumers, the necessity for a satisfactory return on invested capital, the competitive business situation, including the fares of the other airlines operating on the route, as well as the requirement prevent dumping.

As a result, the competition agency may use the same accounting rule as the national regulatory authority (NRA) to establish whether a price is excessive if such a rule is provided by sector-specific regulation [26][36].

As a conclusion, the first step in assessing whether prices are excessive is to calculate manufacturing costs and see if the posted price by the dominating firm is above a "fair" price. For instance, as seen in Figure 1, an excessive market price (pM) occurs when it is more than the desired price (p*). Obviously, there are a least two issues with this method. One is that the approach is very subjective, therefore we won't go into detail there: When does a monopoly's pricing go above and beyond what consumers would consider a "fair" price (denoted by the symbol "p*")? The second is the difficulty in calculating the final price tag (c).

[36] Amin, A., Tareen, W. U. K., Usman, M., Ali, H., Bari, I., Horan, B., Mekhilef, S., Asif, M., Ahmed, S., & Mahmood, A. (2020) A review of optimal charging strategy for electric vehicles under dynamic pricing schemes in the distribution charging network. *Sustainability, 12*(23), 10160.

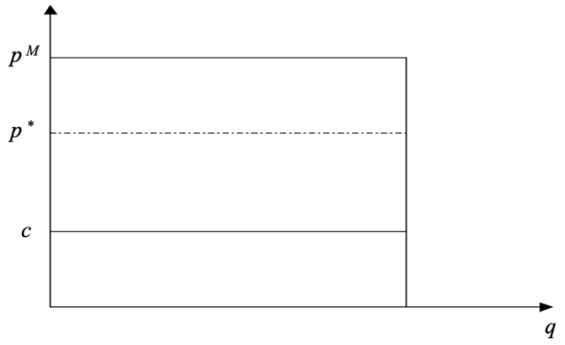

Figure 1

2.4. The dominating company's pricing are compared to those of its competitors

According to the Borenstein [27], it may be difficult for a business regulator to directly calculate the costs even when businesses are subject to a financial transparency mandate, an antitrust authority may find it almost impossible. Then, it might compare more easily accessible information, like two pricing of the firms in question. Figure 2 shows an example where the same price is paid for two services with differing prices, which the authority may use to justify charging the same price for both. On the other hand, it may reveal that two separate, competitive prices are offered for the exact same product or service, and the price increase paid by one customer is rationalised by the knowledge that a lower price paid by another customer is for the same product or service. , profitable price has been charged to other customers. Figure 3 shows this scenario in action [27][37].

Meanwhile Bernstein and Gauthier [28] demonstrate that one price is exorbitant, the authority must first demonstrate that both prices are lucrative and discriminating. Article 82a

[37] Borenstein, S. (1991) The dominant-firm advantage in multiproduct industries: Evidence from the US airlines. *The Quarterly Journal of Economics, 106*(4), 1237-1266.

of the European Community's Treaty will forbid this kind of pricing (unfair price). Article 82c EC and the Competition Law may be used to dispute the same pricing (discriminatory) and the Competition and Markets Act (CMA), with most examples of excessive pricing being rolled into CMA complaints [28][38].

The regulatory body can opt to look at two different pricing that the dominant business has used in the same Member State. This tactic was initially utilised by the Commission in its lawsuit against General Motors, in which it made an unfair price decision. Beginning in the early 1970s, General Motors Continental was given the exclusive right to provide conformity certificates for cars sold in Belgium. In order to re-enter Belgium after being sold in another Member State, re-imported vehicles needed this document. Initially costing 146 EUR, GMC immediately reduced the price, making it available for only 25 EUR for European models [28][39].

[38] Bernstein, A. B., & Gauthier, A. K. (1998) Defining competition in markets: why and how? *Health Services Research, 33*(5 Pt 2), 1421.

[39] Borenstein, S. (1991) The dominant-firm advantage in multiproduct industries: Evidence from the US airlines. *The Quarterly Journal of Economics, 106*(4), 1237-1266.

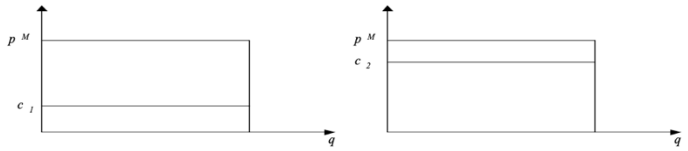

Figure 2

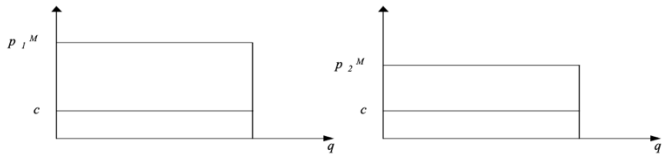

Figure 3

The Commission found unfair practises and fined the company 100,000 EUR over four different reasons. (1) Even while European models were more commonly imported and made more effective use of their fixed costs, the cost to certify American models brought to Belgium remained identical to the cost to accept European models. (2) For customers who balked at paying the full price, GMC was prepared to do the service on its own for 25 EUR. Thirdly, GMC's competitors in Belgium that serve as authorized agents for other manufacturers and provide inspections comparable to GMC's charge much less (70 EUR or less) for their services. Before GMC was awarded a monopoly by law, (4) the government testing stations charged only 30 EUR.

Since it was not contested that GMC's prices were exorbitant, the Court of Justice did not rule on the methods of evidence, but affirmed the premise that an unjust price would be oppressive. The Court reversed the Commission's ruling, however, because issuing conformity certificates was a new responsibility for GMC, transmitted from state testing stations. While GMC initially charged a premium for this service, it quickly adjusted its pricing structure to reflect the true economic cost of the service it provided.

Ten years later, an almost identical situation happened. In addition, British Leyland had the exclusive right to issue national certificates of compliance under the law. BL's initial price for both RHD and LHD vehicles was 25 GBP, however the amount was later doubled to £150 for dealers and £100 for private persons for LHD vehicles. A standard cost of 100 GBP was initially assessed by BL at the initiation of a Commission process, however this was later lowered to 25 GBP. The Commission determined that these prices likely weren't set to represent costs but rather to prevent the importation of counterfeit goods. That's why they had to pay a fine of 350,000 Euros [29][40].

Due to its finding that granting certifications for left- and right-hand-drive autos should only differ by a fast administrative inspection which shouldn't cost too much, the Court upheld the Commission's judgement on appeal. Therefore, the price gap between the two services could not be justified by the difference in value. The fees had little to do with actual expenses and were set arbitrarily to discourage the re-importation of left-hand-drive vehicles.

In another option, the authority may look at the pricing that the dominant enterprise is charging in each Member State and determine which one is more reasonable. As can be seen above, the Commission adopted this strategy, This was implicitly agreed upon by the Court decision United Brands, which established the link between discriminatory and unfair pricing. The Commission must prove unfair pricing by demonstrating that both rates are profitable despite being significantly different for the same service. For the Commission to establish that

[40] Lukoff, F. (1986) European Competition Law and Distribution in the Motor Vehicle Sector: Commission Regulation 123/85 of 12 December 1984. *Common Market Law Review, 23*(4).

prices are discriminatory, it must demonstrate that there is an unjustified disparity in the prices and that the purchasers are disadvantaged as a result [30][41].

2.5. Value analysis of competing companies' offerings vs the dominating company's

The review body may also look at what other companies are charging for like items. This approach comes in a few different flavors depending on the location of the competing business: market where the dominant business operates, a separate market within a single Member State, or an entirely other Member State.

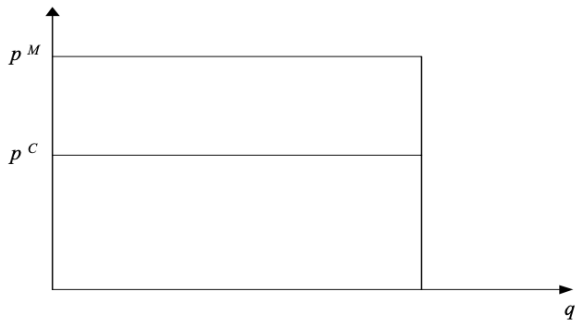

Figure 4

In United Brands, the Commission used this method to determine whether Chiquita's banana pricing were in line with the market when compared to other brand-name bananas of comparable quality. The Court has given its tacit approval to this method while maintaining that a discrepancy of 7% is not necessarily unreasonable. Nonetheless, this is a highly misleading examination since it might reveal exorbitant pricing if there are differences in quality of product across businesses. If the dominant business has risen to the top via better

[41] Howarth, D. N. J. E. C. L. a. C. A., G. Amato, & C. Ehlermann, e., Hart Publishing, Oxford. (2007) Unfair and Predatory Pricing Under Article 82 EC: From Cost-Price Comparisons to the Search for Strategic Standards.

goods, it may legitimately charge more for those offerings without engaging in abusive pricing practices.

This technique finds particular use in contrasting the cost of the patented goods sold by the undercover company to that of a comparable product sold by rival companies that does not infringe on any patents [31][42].

A Dutch court questioned the European Court of Justice in Parke Davis (2001) whether or not the holder of a patent might charge more for his or her goods than the price of an identical product that was not protected by a patent and originated in another Member State. The Court said that comparing the cost of a commercial invention inside one Member Country to the cost of a particularly in non product in an another Member State was inadequate to prove an excessive price. During the test, it was unclear why the pricing comparisons were inadequate; one featured patented and unpatented commodities, while the other covered two different countries. After three years, in the case of Deutsche Grammophon, the Supreme Court clarified the situation by stating that comparing prices in various countries may be indicative of abuse. Because of this pricing comparison between patented and unpatented items, the court's decision in Parke Davis made sense.

In fact, the Italian Court of Justice was asked to rule on the case of Renault (1988) to determine whether or not it was unfair for a car manufacturer to register intellectual property rights to a purely ornamental arrangement of spare parts for cars, effectively stifling competition from alternative suppliers. The Court replied that while the pursuit of a special power conferred by state legislation may not be inherently wrong, the resulting exercise of that right may be violent if it leads to the arbitrary unwillingness to produce replacement parts to

[42] Danieli, D. J. H. E., Policy, & Law. (2021) Excessive pricing in the pharmaceutical industry: adding another string to the bow of EU competition law. *16*(1), 64-75.

personal repairers, the imposition of excessive fees for the replacement parts, or even the judgement to halt production of replacement parts for a specific model even though that so many automobiles of that model remain within circulation. The Court has concluded that:

> ...a greater price for the than for it the does not necessarily entail an abuse, as the owner of the protection rights to an ornamental design may legitimately demand a return on the sums which he has spent to perfect the protected design.

Because of the importance of protecting investment incentives in intellectual property, it is not sufficient to compare the price of a protected product to the price of a comparable unprotected one to show that the former is unfair. Gyselen (1990)[43] points out that the Court tacitly recognized the idea that inventors should be allowed to objectively explain their higher price in order to recuperate their additional expenses and prevent others from free riding on their innovations.

In Figure 5, we see an example of the second kind of test (a compared with enterprises engaging in another market situated within the same Sovereign Nation), when the price pM of a dominant company under investigation is compared with both the market rate pB arising from that other market B.

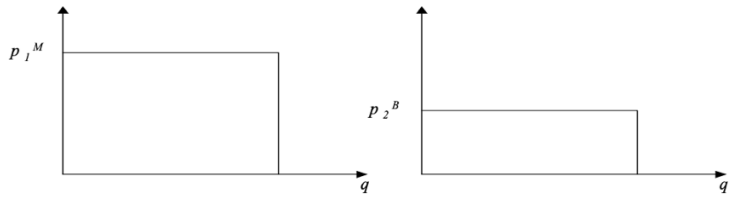

Figure 5

[43] Gleeson, N. C. (2013) Has Margin Squeeze Abuse in EU Competition Law Developed because of Liberalisation of the Network Industries in the EU. *Eur. Networks L. & Reg. Q.*, 15.

The Bodson case included a request for the Court's explicit approval of this revised version. In its initial finding conclusion on the legitimacy of state exclusive concessions to supply the external systems for funerals, the Court found, in obiter dicta, that:

> The rates charged by the consortium of businesses that have been granted a concession must be comparable to those charged by other businesses. Prices charged by concessionaires may be evaluated more objectively if they were compared in this way.

The Court made a good point when it proposed contrasting the public concession market's noncompetitive pricing with that of a competitive market [30][44].

The Court has approved of a third possible approach—a comparison with enterprises operating in another Member State, sometimes known as "benchmarking," and frequently cited in preliminary decision cases because of the internal market component it brings.

A German court asked the European Court of Justice in Deutsche Grammophon whether it would constitute an abuse of its exclusive dispersion right for just a German professional audio manufacturing company to set a selling price throughout Germany that was higher than the value of the original package when sold in France as well as re-imported into Germany. As the Judge Has Ruled,

> It is not sufficient in and of itself to reveal an abuse if the difference between the controlled price (in Germany) and the price of the product reimported from another Member State (in this case, France) is small. However, if the difference is large and cannot be explained by any objective criteria, it may be indicative of an abuse.

[44] Howarth, D. N. J. E. C. L. a. C. A., G. Amato, & C. Ehlermann, e., Hart Publishing, Oxford. (2007) Unfair and Predatory Pricing Under Article 82 EC: From Cost-Price Comparisons to the Search for Strategic Standards.

2.6. Recent practice of the EU

Only four official Decisions criticizing high pricing were made by the Commission in over forty years of competitive practice. We've already gone through the first three possibilities.

In the 2001 case Deutsche Post II, DPAG which had a monopoly on domestic mail delivery at the time, argued that any letter originating from outside of Germany but included some kind of German reference (often a German return address) was sent from Germany. The domestic tariff was levied because it was assumed that the mail was being sent internationally to avoid domestic postal taxes [32][45].

According to De Streel [24], the Commission began by trying to determine who had sent the contentious emails. It turned out that they weren't sent from Germany at all, but rather the United Kingdom. Since no effort was made to avoid domestic postage, this letter should be handled as standard international mail. As another example, the Commission decided the domestic price for disputed mail was too high. Since DPAG was a monopolist, it was impossible to conduct a full examination of its average expenses since no accurate accounting data was available for the time period in question. Instead, the Commission relied on the DPAG's estimate of the cost of transporting incoming foreign mail. Given that there is no need to gather mails from all across the country, DPAG claimed in its REIMS II agreement announcement that the costs associated with international traffic distribution were only 80% of the expense of processing domestic mail. As a result, the Commission concluded that the challenged mailings' true costs were at least 20% below the tariffs that were actually collected.

[45] Europeia, C. (2012) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *A Roadmap for moving to a competitive low carbon economy in, 2050*.

Given the haziness of the law at the time, it therefore imposed a punishment, although it was a relatively nominal 1,000 Euros. Because the case hinged more on identifying the mail's source than on the charges themselves, Deutsche Post did not file an appeal as it had with prior Commission Decisions on unjust pricing. Even DPAG did not really object that a reduced rate should have been charged after it was proven that the challenged messages were not bypassed internal mails [24][46].

Those four examples are only the tip of the iceberg. Several additional proceedings launched by the Commission resulted in price reductions but did not reach a formal judgement. Almost all of the lawsuits involved newly deregulated network businesses including airlines, power grids, and most notably the telecommunications sector.

In 1998, numerous Member States filed complaints about the exorbitant cost of long-distance and international calls made using fixed-line telephones, as well as the wholesale fees paid by one foreign operator to another. As prices dropped, sometimes thanks to involvement from national regulatory bodies, the Commission gradually concluded its cases, having proven its arguments using the discriminatory technique.

There have been several reports of dissatisfaction with the wholesale fees and excessive prices for fixed-to-mobile calls. Fixed termination costs, fixed retention fees, even mobile termination fees were shown to be unfair due to discrimination and inaccurate benchmarking in 1998. Operators agreed to a steep reduction in costs in exchange for cases being moved to NRAs with jurisdiction under national communications laws. In 2002, WorldCom once again

[46] De Streel, A. (2006) Exploitative and exclusionary excessive prices in EU law.

complained about the Netherlands' exorbitant mobile termination rates, but this time the Commission chose to investigate the matter as an instance of price-squeezing abuse [21][47].

Using the infrequently sector-enquiry rule, which allows the Commission to investigate the market as a whole instead of individual businesses, the Commission once more investigated the mobile industry in 1999. This time, it focused on the high expense of international roaming. Even though no formal action has been initiated, the Commission has found several possible instances of excessive pricing due to discrimination, benchmarking, and an analysis of the pattern of changes to price over a four-year period. In contrast, in July of 2001, european Commission contemplated launching investigations for exorbitant price imposed by group dominant operators after conducting dawn raids at the headquarters of nine mobile carriers inside the UK and Germany [33][48].

In 1999, the Commission initiated a second sector examination into the terms of leased lines, a crucial component of the Information Society. Using benchmarking data, the Commission suspected five companies were charging discriminatory rates for international leased lines and opened an investigation into the matter. After prices dropped significantly in December 2002, the investigation and most of the cases were ended [33][49].

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[47] Vásquez Duque, O. J. T. U. o. O. C. f. C. L., & CCLP, P. W. P. (2015) Excessive pricing: A view from Chile. *41*.

[48] Hou, L. (2011b) Some Aspects of Price Squeeze within the EU: A Case-Law Analysis. *European Competition Law Review, 32*(5), 250-257.

[49] Hou, L. (2011b) Some Aspects of Price Squeeze within the EU: A Case-Law Analysis. *European Competition Law Review, 32*(5), 250-257.

Even though any dominant corporation may be guilty of unfair pricing under the law, the Commission has been very stingy with its use of this authority, as this brief summary demonstrates. The Commission has said on several occasions that it does not want to assume the role of price regulator. It seldom opened new cases and even less often issued new Decisions. In most cases, something unique was at risk, and the dominating position was safeguarded to some extent by government intervention. The instances may be split into two categories. In the first case, the monopoly was legal, but the dominant company was abusing its position to the detriment of the domestic market. The Commission was more worried about free flow than it was about anticompetitive end-user abuse and related allocative inefficiencies [34][50].

In a second group of examples, the dominant enterprise operated in newly liberalized markets, where any price gouging may have dampened political support for the liberalization initiative. A senior Commission official said, "A major goal was to demonstrate the effective consumer benefits of liberalization as quickly as possible and to secure sustained public support for liberalization through these procedures' emphasis on passing on these benefits to consumers at a rapid pace through price reductions and improvements in services." Furthermore, the Commission generally relied on national regulators and only stepped in when a national regulator was either not getting involved at all (as was the case with financial reporting rates, fixed retention or termination charges, and national leased lines tariffs) or when it was legally

[50] Gibson, N. (2014). The Law and Economics of Article 102 TFEU: HeinOnline.

unable to do so (as was the case with mobile termination rates, roaming charges, and international leased lines tariffs) [35][51].

2.6.1. The scope of European Union Competition Law

Competition law's important preliminary issue is its scope, which must be answered before the law's core provisions can be discussed in any depth. Who or what will it affect and how will they be acting?

Unfortunately, there is no clear solution to this issue, albeit recent judgements from European Court of Justice have provided some helpful clues. Generally speaking, a business must meet the definition of a "undertaking" in addition to be subject to EU antitrust regulations. The Treaty does not define this word, but precedent makes it apparent that it is irrelevant whether the institution is public or private, profit-making or non-profit; rather, what matters is whether it is engaged in economic activity. Therefore, it is quite feasible for an organisation to be subject to competition law in regard to certain of its operations but not others, depending on the nature of the activity in issue rather than the composition of the institution itself. Some crucial health care domains will be left out since they don't fit the definition of an economic activity. Services such as national education and mandatory basic social security programmes are examples of these, as are a variety of activities carried out by organisations with primarily social purposes and not intended to participate in industry or commercial activity. Since "the state is not aiming to participate in lucrative activity but rather fulfi lling its duty towards its own people in the social, cultural, and educational fi elds," the Supreme Court has ruled that national education courses are not "services supplied for compensation" in cases like Humbel.

[51] Gleeson, N. C. (2013) Has Margin Squeeze Abuse in EU Competition Law Developed because of Liberalisation of the Network Industries in the EU. *Eur. Networks L. & Reg. Q.*, 15.

8 The notion may also rule out regulatory efforts that are not economically beneficial, such as Eurocontrol's and Cali's antipollution monitoring services [31][52].

2.6.2. Comprehensive control of legality

The European Court of Justice reviews the legality of Commission decisions on the grounds stipulated in Article 263 TFEU, including lack of competence, violation of such an important constitutional provision, violation of both the Treaties or any additional rule of law pertaining to their own application, as well as misuse of powers.

There is "unlimited jurisdiction with respect to the sanctions" in European Union courts for disputes involving competition law. In such circumstances, the court may modify the original penalty or fine amount, as well as the frequency with which it is to be applied. The general public has been led to believe that the sanctions and charges for breaking Articles 101-102 include anything criminal in character. The European Universal declaration Of Human rights, Article 6 states that "everyone is entitled to an equal as well as public hearing by an impartial and independent tribunal constituted by law within a reasonable time in the dedication of his civil obligations and rights or of any conspiracy case against him." In this context, unrestricted jurisdiction is often seen as linked to the requirements of Article 6 (1) of the ECHR. One question that has surfaced from European system is how far the guarantee of limitless jurisdiction "with respect to sanctions" in European Competition law really goes. It's possible to make the case that this provision does more than just increase the discretion of the courts when deciding on penalties.

The Commission's determination of a fine or monthly penalty payment is subject to appeal by the Court of Justice, which has "unrestricted authority." Reversing, reducing, or increasing the

[52] Danieli, D. J. H. E., Policy, & Law. (2021) Excessive pricing in the pharmaceutical industry: adding another string to the bow of EU competition law. *16*(1), 64-75.

fine or monthly penalty payment issued without first assessing the underlying rationale is not feasible. This reading would be consistent with the concept that legal challenge as a tool for safeguarding individual rights. By accepting this reading, we open the door to limitless jurisdiction over a significant portion of antitrust enforcement. Merger regulation and State assistance decisions would be the sole exceptions. This divergence, however, is quite insignificant. Courts have very little leeway to decide on the content without becoming competition authorities, as we shall see later [21][53].

[53] Vásquez Duque, O. J. T. U. o. O. C. f. C. L., & CCLP, P. W. P. (2015) Excessive pricing: A view from Chile. *41*.

Chapter III. Methodology

3.1. Introduction

The current chapter discusses the material and methodologies adapted in the current research. The strategies followed, selected design and study samples are discussed in the current chapter of the study. In addition, it outline the population of the research, and methodologies adapted to collect the data. There are many different ways to collect data from samples or populations in order to understand their behavior or opinions better. The following section overviews of the used approaches and its own strengths and weaknesses; in the current research [36][54].

In the course of their basic research, scientists don't always seek for practical applications of their findings; sometimes, they just want to learn more for the sake of it. The methodology section of a research paper details the methods and materials used in order to carry out the study. Methods of sampling and the size of representative samples are dissected. Processes for gathering and analysing data are also detailed [37][55].

3.2. Research Design

Early on, they used quantitative cross-sectional studies to acquire data. This sample will focus on academic works that analyse how EU law affects abusive

[54] Mohajan, H. K. (2018) Qualitative research methodology in social sciences and related subjects. *Journal of Economic Development, Environment and People, 7*(1), 23-48.

[55] Gupta, B., & Gupta, N. (2022). *Research methodology*: SBPD Publications.

pricing practises. The ethics board agreed with the proposed course of action [38][56].

In their studies, scientists often take either a positivist or interpretivist perspective. Better evidence might be gathered if positivists were successful in their pursuit of objectivity and uniformity. Taking a quantitative approach here is the same as taking an optimistic one. The use of interpretivism in research has the potential to provide results that will satisfy a variety of academics. Adopting an interpretivist viewpoint might be useful for understanding the situation at hand since it compels analysts to consider many interpretations of the evidence. Researchers in many fields, even those with the most renown, favor using qualitative methods [39, 40][57].

The next step, after deciding on a research question, would be to use a qualitative approach (constructivism) to answer that question and achieve the study's other goals [41][58].

3.3. Research Strategies

We conducted a complete overview of our work using descriptive research methods. To better understand entities, contexts, and connections, descriptive analytic methods are used.

[56] Pandey, P., & Pandey, M. M. (2021). *Research methodology tools and techniques*: Bridge Center.

[57] Patel, M., & Patel, N. (2019) Exploring Research Methodology. *International Journal of Research and Review, 6*(3), 48-55.

[58] Mishra, S. B., & Alok, S. (2022). Handbook of research methodology: Educreation publishing.

Findings and highlights from a study may be summed up using descriptive research and analysis [42][59].

3.3.1. Qualitative Research

An open, transparent, and rigorous (planned, organized, and public) approach is necessary to extract the most useful data from any research. During qualitative studies, researchers actively look for and investigate underlying themes and insights in the data. This phrase covers a broad range of research techniques, such as open-ended interviews as well as purposive sampling.

This model is so effective because it mimics real-world situations and gives researchers the freedom to zero down on particular. It's a trove of tangible and interpretive methods for making the intangible tangible. It employs a wide range of research techniques and uses an interpretative, naturalistic approach to the topic at hand. Analysis of information gathered through observation of specific groups or geographic areas is the focus of non-numerical data analysis, a subfield of social science research. Real people's reactions to actual events are captured here, along with observations and analyses of those reactions. Researchers investigate the social processes and environmental factors that contribute to the exclusion of a community, as well as the community's attitudes, knowledge, and perceptions of the program in question. It offers a less structured account because of its focus on innovation. This type of study uses words rather than numbers to collect data, and it involves observing the world in its native setting to strip away the significance people attribute to mundane occurrences.

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[59] Mukherjee, S. P. (2019). *A guide to research methodology: An overview of research problems, tasks and methods*: CRC Press.

3.4. Research Approach

Methods for solving, or at least prioritizing, research challenges are mapped out in detail in a research plan. Inductive or deductive reasoning, or both, may be used to analyze each sample separately. Using reason, we were able to solve this mystery [38][60].

3.4.1. Deductive approach

After understanding the fundamental premise of the issue at hand, assumptions may be scrutinised and assessed more objectively. Researchers may verify their results and evaluate the strength of their theories if they stick to these procedures. Most professionals think that it's best to build a new strategy on solid facts and thorough consideration.

3.4.2. Sample

As depicted in the above section the mixed methodology approach collects both types of data, primary and secondary. Where the secondary data will be collected using the following sources:

- Journals/Databases
- Websites
- Literature

The collected data will be cleaned and be used depending upon the current study's objectives.

3.4.3. Data Collection, Processing, and Analysis

An important part of every statistical study is gathering relevant data. In order to answer research issues, the present study compiles data from several sources. This process takes the

[60] Pandey, P., & Pandey, M. M. (2021). *Research methodology tools and techniques*: Bridge Center.

data and extrapolates future outcomes. Researchers often start with a little sliver of relevant data and work their way up in terms of both size and breadth. Information about the study goals is gathered from sources such academic papers, news articles, and already published literature, as shown in the examples.

The present study relied on secondary data collecting, whereas primary data collection is commonplace in the business, government, and academic sectors.

3.4.4. Statistical Approach

Because of the sheer number of information collected, qualitative data analysis may be difficult to do. It is up to the researcher to perform a thorough analysis while still presenting the results in a clear and coherent fashion [43][61].

Even while the data produced is not always analyzed in the same way, it is always subject to the same rules regardless of the design method used. The analysis of data is an iterative procedure that incorporates knowledge gained from the literature with the spotting of developing trends. Once all data are gathered and arranged, a thorough analysis may begin. It's not uncommon for work to start before all data are gathered. Transcripts are read from beginning to end, without skipping any parts. At this level, you should be using the data as a thinking tool and seeing if any intriguing patterns emerge.

Content analysis is performed in the current research to identify the insightful ideas from the collected data. A thorough analysis of a collection of documents with the goal of determining commonalities, biases, and other recurring elements. In the 19th century, a

[61] Ezrachi, A., Gilo, D. J. J. o. C. L., & Economics. (2009) Are excessive prices really self-correcting? , *5*(2), 249-268.

technique was used to dissect anything from political speeches to magazine articles to hymns[22][62].

3.5. Limitations

The present study has a few flaws, the most glaring of which are its limited sample size and its over-reliance on secondary sources when primary data would have provided a richer foundation. As with other forms of study, however, there are many more positives to be gained from this one than negatives. Although the Affinity towards Communication Scale (AfCS) is not the first instruments of its kind, to the best of our knowledge, it hasn't been independently validated. The study's overarching goal is to develop and validate a scale to measure a person's inclination toward interpersonal communication.

The limitation of descriptive research is that it cannot establish causality. However, multivariate analysis was not feasible due to the small sample size. Both the probes and the results they yielded were therefore tainted. Expanding the scope of existing studies is necessary if researchers are to get a clear picture of how excessive pricing affects consumers.

[62] Abbott, F. M. J. A. a. S. (2023) Prosecuting Excessive Pricing of Pharmaceuticals under Competition Law: Evolutionary Development.

Chapter IV. Findings

4.1. Introduction

By EU rules, excessive pricing has been monitored for many years. Per EU rules, it often refers to outrageous pricing that has been observed for many years. It often relates to circumstances in which prices are either above or below the market level, allowing buyers to acquire things at inflated prices. In certain instances, this may cause items to become expensive for those with little financial means.

Recent attention has been drawn to the problem of excessive pricing under EU legislation owing to the rise of market abuses and unfair business practices. This often arises when corporations seek a competitive edge by pricing their items above the market average. In certain instances, this may prevent customers from gaining access [30][63].

Recent attention has been drawn to the problem of excessive pricing under EU legislation owing to the rise of market abuses and unfair business practices. This often arises when corporations seek a competitive edge by pricing their items above the market average. This may sometimes prevent customers from gaining access to inexpensive versions of particular products or services.

Under EU rules, high pricing may affect consumer welfare and economic progress, prompting alarm. When prices are too high, consumers may be unable to afford items or services. This may result in financial loss and a diminished capacity to enjoy life in general. In addition, excessive pricing may harm firms since they cannot compete with excessively high rates.

[63] Howarth, D. N. J. E. C. L. a. C. A., G. Amato, & C. Ehlermann, e., Hart Publishing, Oxford. (2007) Unfair and Predatory Pricing Under Article 82 EC: From Cost-Price Comparisons to the Search for Strategic Standards.

There are several ways for companies to reduce the price of their goods and services. One technique is to decrease the price of their interests. In addition, companies might attempt to negotiate better costs with their suppliers. When prices are too high, firms may be able to negotiate better terms with suppliers for products and services. They could also boost manufacturing volume or scale to reduce costs even more. If discussions fail, firms may submit a complaint to the appropriate authorities to seek compensation for customers harmed by unfair pricing.

There is little question that the EU's pricing policies have recently been investigated. With companies like Google Spain and Uber Germany making headlines, companies of all sizes are feeling the spotlight (pun intended). Not only are Europeans dissatisfied, but charges for expensive products and services are widespread around the globe [31][64].

In part, this is due to rules. In many nations across the globe, company owners are required to conform to stringent restrictions governing the prices of their goods and services. This has led to price increases for several interests, including food, clothes, and holiday rentals.

It is essential to remember that price gouging is illegal in Europe (and everywhere else!). Businesses that unjustifiably charge high prices face significant penalties and perhaps closure if they continue to do so. Therefore, be cautious while shopping throughout town; you may get a better bargain by avoiding expensive shops. There is no question that a price system governs the business world. Since prices and fees are predetermined, customers must spend whatever it takes to get what they desire. However, this conventional approach has its limitations. In certain instances, prices may be absurdly high, if not outright exorbitant, compared to comparable goods and services in other countries.

[64] Danieli, D. J. H. E., Policy, & Law. (2021) Excessive pricing in the pharmaceutical industry: adding another string to the bow of EU competition law. *16*(1), 64-75.

Regarding EU consumer legislation and the exorbitant price of products and services throughout the European Union, this problem has lately come to light (EU). According to reports, Brussels is examining many companies for price gouging, with penalties of up to 10 million euros.

Prohibiting exorbitant pricing is one of the most contentious issues in EU competition law due to differing economic perspectives. The purpose of this chapter is to explain this idea in further detail. What follows first outlines the out-of-the-ordinary conditions that could warrant antitrust lawsuits against excessive pricing. Empirical research is then conducted using the two-step analytical framework developed by United Brands, which involves first determining if the profit margin is excessive and then, if yes, determining whether the pricing is unfair either on its own or in relation to competitors [44][65].

Excessive prices are those that are established by a market leader in order to gain an unfair advantage over their competitors and their clients. Because of its exploitative intent, charging an exorbitant price is fundamentally distinct from a cloaked refusal to provide or a version of price squeeze [45][66]. Offering an unreasonably high fee in order to obfuscate a refusal to provide is one tactic used to frustrate such a request. When a high price is imposed on an upstream market while the relevant downstream price is kept constant or lowered, this is

[65] Giosa, P. (2020) Exploitative Pricing in the Time of Coronavirus—The Response of EU Competition Law and the Prospect of Price Regulation. *Journal of European Competition Law & Practice, 11*(9), 499-508.

[66] Hou, L. (2011a) Excessive prices within EU competition law. *European competition journal, 7*(1), 47-70.

known as a price squeeze [45][67]. The goal of both a no-deal stance and a pricing squeeze is to drive out rivals, not to take advantage of customers. Despite the well-documented negative effects of high prices on consumers, the restriction of high pricing remains one of the most contentious issues in European Union economics and law (hereinafter: EU). In particular, many economists have voiced doubts about the sustainability of excessive prices, while European authorities like the European Commission and European courts like the European General Court and indeed the European Court of Justice (ECJ) have rarely found excessive prices in their combined fifty years of eu competition practises.

4.2. Controversy

Competition law, which holds "the invisible hand" in high esteem as the most effective means of regulating markets, tends to avoid taking action when a problem with competition can be handled by free markets alone. As a result, the main points of debate on excessive pricing are I whether or not high prices are self-correcting, and (ii) whether or not an intervention may have positive results. From academia, two opposing groups have emerged: non-interventionists and interventionists. The next paragraphs will offer an overview of all of these factors [46][68]. Various debates exist about excessive pricing under EU law, its history, analysis, and prospects.

Regarding the prices firms charge for their products and services, the EU has long recognized that price discrimination is unlawful. This implies that businesses cannot charge clients

[67] Hou, L. (2011b) Some Aspects of Price Squeeze within the EU: A Case-Law Analysis. *European Competition Law Review, 32*(5), 250-257.

[68] O'Donoghue, R., & Padilla, J. (2019) Excessive pricing. *The law and economics of Article, 102*.

different pricing based on nationality or residency status. In addition, price gouging, the practice of charging more for products than is required to pay expenses, is prohibited.

It has been argued that this action violates EU antitrust legislation, which makes it illegal for enterprises to agree on prices with one another. Others have advocated for a complete and total boycott of the company, stating that anybody who supports such pricing tactics is tacitly supporting exploitation and inequity in the world [31][69].

The European Commission (EC) has taken several initiatives to address these concerns head-on throughout the years. In 2000, the EC established CEPSA, an antitrust agency charged with examining charges of price fixing and other unfair economic practices involving commodities such as energy and food. In 2007/8, the European Commission (EC) started two investigations into the alleged misuse of market dominance by European mobile phone providers (Case ITC/04/07); this resulted in the imposition of hefty penalties against several businesses. And most recently, in October 2017, the European Commission reached a settlement agreement with Gazprom over its proposed acquisition of Eu Networks, one of Sweden's largest internet service providers, alleging that Gazprom had abused its dominant position in gas markets to increase prices for consumers associated with this acquisition. A few high-profile instances continue to grab attention when it comes to debates in excessive pricing under EU jurisprudence: evolution, analysis and prospects. These examples are the ones that have been discussed extensively. The most recent model of this is the controversy that arose as a result of the decision of the French fashion company Yves Saint Laurent to increase the pricing of its products by up to fifty percent.

[69] Danieli, D. J. H. E., Policy, & Law. (2021) Excessive pricing in the pharmaceutical industry: adding another string to the bow of EU competition law. *16*(1), 64-75.

4.3. Non-interventionist

This academic viewpoint maintains, in the main, that antitrust laws should not be used to crack down on companies charging exorbitant prices. The following are four fundamental tenets of their justification for believing what they do.

As a starting point, they believe that artificially high pricing can only help a monopolizing enterprise temporarily. Since new entrants are continually enticed to join a market, it is impossible for a dominating enterprise to make excessive profits on a market for an extended period of time. Therefore, excessive prices are unsustainable in the face of future competition unless the market is safeguarded by substantial and non-transient entry barriers. Consumers may benefit in the near run from an intervention designed to cut the pricing of dominating firms [46][70]. However, in the long term, this intervention would have two unintended consequences: first, it would reduce the incentive for new entrants to the market, and second, it would prevent incumbent enterprises from optimizing their efficiency and, hence, their profit margin. When new entrants may be encouraged within a fair time frame, competition authorities must not interfere in high pricing.

Second, although a price-cost comparison may in principle be used to identify an excessive price, at least three practical barriers impede competition authorities from actually doing so. First, audited financial statistics, however continually published by corporations, are not created for the aim of applying competition legislation. Capitalization of R&D and promotion, inflation, and risk-adjusted rates of return are often not included in such statistics, therefore they do not accurately represent economic expenses. Therefore, antitrust regulators

[70] O'Donoghue, R., & Padilla, J. (2019) Excessive pricing. *The law and economics of Article, 102*.

cannot utilize them in any direct capacity. Moreover, it may be worse when an enterprise offers many items since those accounting data normally do not separate the shared common expenses. In addition, although it is obvious that expenses associated with research and development that are directly related to the product in concern should be included, it is less clear how to apportion the costs of unsuccessful R&D efforts to the cost of the product in question. Last but still not least, the replacement costs of current assets should be included into the product's total economic cost wherever possible. But there is no agreement on how to calculate the replacement costs of the future. The fact that American antitrust legislation, unlike its European equivalent, does not prohibit inflated pricing, is also often cited in support of this view.

4.4. Interventionist

A second school of economists and lawyers, the interventionists, argue that competition legislation should include cases of excessive pricing. The following four points serve as the key pillars of their argument [30][71].

First and foremost, European Union competition law seeks to curb price gouging. According to Akman, when Article 102 was written in the 1960s as part of the Treaty just on Functioning of the European Union, its writers intended it to apply only to exploitative abuses instead of exclusionary abuses.

It wasn't until much later that Article 102 was expanded to include discrimination based on exclusion. Since high prices might have a negative impact on consumers, the government

[71] Howarth, D. N. J. E. C. L. a. C. A., G. Amato, & C. Ehlermann, e., Hart Publishing, Oxford. (2007) Unfair and Predatory Pricing Under Article 82 EC: From Cost-Price Comparisons to the Search for Strategic Standards.

should step in to ensure their safety. Therefore, the goals of competition policy may be effectively advanced by enforcing a prohibition on excessive price [47][72].

Second, they are skeptical that market forces always work to bring down inflated costs. As a first point, the major argument for the non-interventionist is that higher prices entice competitors, and that, in turn, may lead to lower overall costs. However, other researchers, like Ezrachi and Gilo, have argued that this line of thinking is flawed since it was post-entry pricing, not initial ones, that encouraged new entrants. Even though the price is low now, new entrants could think twice before entering a market if they knew that dominating firms would immediately lower prices once they entered [48][73]. It is only when they are certain that they can outperform the current market leader that new entrants will join the field. That being said, it wasn't only high costs that prompted new players to enter the market; it was also efficiency. Second, as has been shown in many network sectors, such as electronic communications, high pricing do not entice rivals to join a market with high and non-transitory entry barriers. In certain situations, it would be appropriate for authorities to intervene on the basis of competition law.

Interventionists maintain, thirdly, that determining what constitutes an exorbitant price is a very subjective and complex task [49][74]. There are situations in which determining whether

[72] Peter, A., & Singh, N. (2018). Excessiveness of Prices as an Abuse of Dominant Position: The Case of India *Excessive pricing and competition law enforcement* (pp. 231-284): Springer.

[73] Ayata, Z. (2021) Old abuses in new markets? Dealing with excessive pricing by a two-sided platform. *Journal of Antitrust Enforcement, 9*(1), 177-195.

[74] Geradin, D., & Katsifis, D. (2022) Strengthening effective antitrust enforcement in digital platform markets. *European competition journal, 18*(2), 356-405.

or not a price is excessive compared to a legally permissible price is not always straightforward, but there are other situations in which it is quite simple to establish that a price is excessive [50][75].

4.5. Recapitulation

Both interventionist and non-interventionist arguments suggest that there is a substantial danger of type I and type II mistakes with an antitrust intervention against exorbitant pricing. No verdict on the issue will be made here [44][76]. However, it's important to recognize that there's a point where interventionist and non-interventionist views meet in the middle. The interventionist is not out to prove the non-interventionist wrong on every point. When the non-interventionists' arguments fall short, they favor antitrust intervention. In a market with high and permanent entry barriers, for instance, both the interventionist and indeed the non-interventionist argue that exorbitant pricing would persist. Moreover, the interventionist agrees with the non-interventionist that it is difficult to judge high pricing in general, but believes that in certain extreme circumstances, the issue may be resolved with relative ease. All of these facts point to the interventionist having a cautious stance on exorbitant pricing. They don't think competition authorities need to step in whenever prices are too high, only in extreme cases [44][77].

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[75] Danieli, D. (2021) Excessive pricing in the pharmaceutical industry: adding another string to the bow of EU competition law. *Health Economics, Policy and Law, 16*(1), 64-75.

[76] Giosa, P. (2020) Exploitative Pricing in the Time of Coronavirus—The Response of EU Competition Law and the Prospect of Price Regulation. *Journal of European Competition Law & Practice, 11*(9), 499-508.

[77] Giosa, P. (2020) Exploitative Pricing in the Time of Coronavirus—The Response of EU Competition Law and the Prospect of Price Regulation. *Journal of European Competition Law & Practice, 11*(9), 499-508.

4.6. Exceptional Circumstances

There is a developing problem that has to be looked at, and that problem is the high price of drugs that is allowed by EU law. Recent cases have dealt with new concerns like the protection of patient data and bio similarity, demonstrating the tremendous change that has taken place in this area of the law. In addition, other prospective innovations that are just around the corner might affect this industry. In recent years, the EU's jurisprudence has been more concerned about the high cost of drugs. In Roche v. EEC, which the European Court heard on Human Rights in 2001, the court concluded that Spain had breached the European Treaty by permitting medicine costs to remain unreasonably high. This rulingbrought attention to how important it is to ensure that medicine prices are fair and non-discriminatory. It established a precedent for future cases addressing EU legislation's excessive pricing of pharmaceuticals. Since that time, several significant advancements have been made in this area of law. The European Court of Human Rights decided in 2009 that Italy had breached Article 8 of the European Treaty by permitting medicine costs to be too high. This decision was made in the case of AstraZeneca PLC v EEC. This ruling set a standard for future instances regarding bio similarity and the protection of patient data (see also Almirall SA v OHIM [2015] EUTC No 5695). In the case of Eli Lilly & Co. v. UK, which the ECtHR heard in 2011, the court decided that the United Kingdom had breached Article 6(1) of the European Treaty when it gave five years of exclusive rights to two pharmaceutical corporations. This ruling set the door for future talks on price reductions for generic versions of copyrighted pharmaceuticals between pharmaceutical firms and the European Medicines Agency (EMA) [21]. In the case of Novartis AG v Comunità Europea, which was heard in 2013, the ECtHR decided that Switzerland had

breached Article 101(2) of the Treaty when it allowed required permits to be issued to makers of Essential Health Chemicals. This judgment's significance lies in setting a standard for future instances involving exclusive intellectual property rights (IPR). In addition, in the case of Almirall SA v OHIM, which was heard in 2015, the European Court of Human Rights decided that Spain had breached Article 8 of the European Treaty by permitting medicine costs to remain unreasonably high. This ruling set a standard for future instances regarding bio similarity and the protection of patient data.

Given the aforementioned debate, it's clear that a ban on high pricing runs the danger of significantly distorting competition. As a result, even academics who support antitrust action to curb excessive pricing have acknowledged that such measures should be used only in extreme cases. It is helpful to examine the rare cases since the European authorities are obviously interventionist in forbidding exorbitant pricing. Following an overview of many scholarly suggestions, this section will provide its own proposal based on an evaluation of the existing literature [51].

4.7. Various proposals

Three accumulative requirements were presented by Motta and de Streel to support taking action against excessive pricing. In the first place, a monopoly must have been the result of very high and permanent entry obstacles. If a dominant corporation engaged in abusive behavior, it was very improbable that market forces would be able to compel a change [52][78]. The second stipulation was that the monopoly status had to have originated from either historically uncondemned exclusionary anticompetitive behavior or currently existing

[78] Hou, L. (2011a) Excessive prices within EU competition law. *European competition journal, 7*(1), 47-70.

exclusive/special privileges. This stipulation was designed to rule out scenarios where the first stipulation was met but a monopolistic position persisted anyhow due to prior inventions or investments. In such a scenario, sky-high pricing may be a welcome magnet for new rivals or a reward for bad bet and/or advances [53][79]. According to their third stipulation, there has to be an industry-specific watchdog. When it came to controlling prices, industry watchdogs often fared better than competition authorities. When a regulator with expertise in a particular industry has the authority to intervene, competition authorities should generally stay out of the way. Only in the absence of sector-specific regulators or in the presence of evident regulatory failure did antitrust action become a justifiable option [54][80].

Further, Evans and Padilla claimed that a company should not be able to charge extravagant prices if it has a (near) dominant position in the marketplace that is not the result of past investments or innovations and is sheltered from competing by legal restrictions. They disagreed with Motta and van Streel in that they didn't believe this criteria could completely preclude false conviction, as the legitimate monopoly may be in the middle of, or about to begin, big investment initiatives that would be threatened if prices were regulated [55][81].

[79] Akman, P., & Garrod, L. (2011) When are excessive prices unfair? *Journal of Competition Law & Economics, 7*(2), 403-426.

[80] Ezrachi, A., & Gilo, D. (2009a) Are excessive prices really self-correcting? *Journal of Competition Law and Economics, 5*(2), 249-268.

[81] Motta, M. (2004). *Competition policy: theory and practice*: Cambridge University Press.

Therefore, they tacked on an extra cumulative condition: the costs must be high enough that there's a probability they'll stifle innovation in surrounding marketplaces [56][82].

Antitrust action there under umbrella of exploitative abuse was met with caution as explained by Röller. This was due to the fact that it was unclear what constitutes a "excessive price" and how antitrust action would ultimately help customers, in addition to the fact that it was difficult to measure price-cost margin accurately [57][83].

As a result, he offered a set of five accumulative conditions: (i) substantial obstacles to entry; (ii) the market will unlikely to identity; (iii) the absence of a structural remedy; (iv) the absence of regulation or regulation failure; and (v) the availability of a solution only in "gap occasions" and "mistake scenarios." There was a clear need to leave markets alone where there were either few or no barriers to entry and/or where price discrepancies were being corrected by the market. Concerning the third need, Röller said that the correct strategy against high pricing should prioritize structural cures like lowering entry barriers, expanding markets, liberalizing economic policies, etc [58][84].

Article 102 instances involving exploitative abuse would only be useful if they provided evidence in favor of a structural remedy. The fourth stipulation acknowledged the possibility

[82] Geradin, D. (2007) The Necessary Limits to the Control of'Excessive'Prices by Competition Authorities-A View from Europe. *Tilburg University Legal Studies Working Paper*.

[83] Calcagno, C., & Walker, M. (2010) Excessive pricing: Towards clarity and economic coherence. *Journal of Competition Law and Economics, 6*(4), 891-910.

[84] Padilla, J., & Evans, D. S. (2004) Excessive prices: using economics to define administrable legal rules. *Available at SSRN 620402*.

that dedicated regulatory bodies might possess more in-depth knowledge of regulatory matters than antitrust authorities. Consequently, antitrust litigation was only warranted in situations in which there was indeed no regulatory body or if that body was inadequate. The fifth stipulation prevented claims of excessive pricing in markets where preeminence was won via merit-based competition. If power had been acquired dishonorably, then taking action to stop the exploitation would be appropriate. Establishing or strengthening a dominating position requires, by definition, the elimination of all potential rivals.

Most of the time, Article 10 will cover these kinds of egregious cases of discrimination based on membership status. Two potential exceptions to this rule exist, however, in which the exclusionary acts may not have been denounced and might thus lead to inflated prices. This category comprised both "missing cases" (anti-competitive conduct that were not caught under Article 102) as well as "wrong cases" (instances in which an antitrust agency may not have appropriately penalised an exclusionary usage). He argued that just one criteria was necessary to determine which markets may benefit from government involvement [22][85].

[85] Abbott, F. M. J. A. a. S. (2023) Prosecuting Excessive Pricing of Pharmaceuticals under Competition Law: Evolutionary Development.

Chapter V. Discussions and Conclusions

5.1. Discussions

All the above recommendations agree, first and foremost, that markets with significant and persistent barriers to entry are the only ones where action against excessive pricing should be done. Where there are little obstacles to entry, the essay acknowledges, antitrust regulators are not needed. Profit margins that are too high are unsustainable if new entrants may easily enter the market, especially if they use a "hit and run" tactic. While there is some disagreement among experts on how to define entrance barriers,20 everyone agrees that formidable obstacles to entry might take the form of either physical obstacles or legislative restrictions. Even with above-competitive level earnings, new entrants may be discouraged from joining the market by the existence of such high and permanent entry barriers. Antitrust litigation may be warranted given that the hand of the market cannot function here [52, 59][86].

Second, some academics have argued that a market position of greater than typical dominance is required for a price gouger to get away with it. Evans and Padilla call this a monopolistic stance, whereas Motta and also de Streel call it super dominance. Paulis contended that the existence of significant market power rendered the concept of super domination unnecessary. It's vital to remember, however, that even in markets protected by high and persistent entry barriers—like, say, the wholesale prices for entry but instead demand origination just on public mobile network—championship may be produced [60][87].

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[86] Hou, L. (2011a) Excessive prices within EU competition law. *European competition journal, 7*(1), 47-70.

[87] Ehlermann, C.-D., & Marquis, M. (2008). *European Competition Law Annual 2007: A Reformed Approach to Article 82 EC*: Bloomsbury Publishing.

That's why it's not always unnecessary to put up a barrier in terms of market share. In addition, the infringer has to be certain that its true rivals cannot benefit from the high price. It means two things: first, not every monopolistic business can charge exorbitant rates, and second, a monopoly or near monopoly is not necessary for effective price manipulation. Even in highly competitive marketplaces, excessive pricing may work if the dominant firm has substantial advantages over its rivals and new entrants face substantial hurdles to entry [61][88]. Here, customer demand is dampened because of high pricing, and smaller rivals just can't meet it. Thus, extreme predominance is necessary for the events described in this article to take place. This abnormally high level of dominance encompasses not only an absolutely monopolistic hold on the market, but also a sizable hold on the market as compared to its competitors [50][89].

The term "super domination," which was first used by Motta as well as de Streel, is used here because of its adaptability. Thirdly, Motta as well as de Streel, Evans as well as Padilla, and Röller suggested that the cause of the super domination should not be prior investments or inventions, but rather present or past exclusive/special privileges or un-condemned past exclusionary anti-competitive activity. But this article doesn't think it's important to provide that proviso, even if Paulis agrees with it. As long as an excessive price does not open the door to new competitors, the market will not adjust to the situation [62][90]. Thus, the effect of

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[88] Agrawal, A. (2021) Predatory Pricing and Platform Competition in India. *World Competition, 44*(1).

[89] Danieli, D. (2021) Excessive pricing in the pharmaceutical industry: adding another string to the bow of EU competition law. *Health Economics, Policy and Law, 16*(1), 64-75.

[90] Kianzad, B., & Minssen, T. (2018) How Much Is Too Much: Defining the Metes and Bounds of Excessive Pricing in the Pharmaceutical Sector. *EPLR, 2*, 15.

excessive prices on consumer welfare is the same whether or not they are the result of a monopoly. If this line of thinking holds water, it is unclear how inordinate prices applied by businesses due to investments as well as innovations could've been corrected without antitrust intervention. Because of this, it is argued that it cannot be used to justify the initiation of antitrust charges [62][91].

Finally, Motta, de Streel, and Röller argued that regulatory agencies should recuse themselves when sector-specific regulators are present, because the latter are better suited to price regulation. In the absence of such a regulator or clear evidence of regulatory failure, they noted that regulatory agencies could step in. Nevertheless, this argument has no statutory backing, at least on a European Union level. l. In reality, EU competition law has a constitutional significance which sector-specific regulation could indeed circumvent, and thus the Commission has always been tempted to use antitrust intervention to discipline and synchronise the actions of national regulators. The Commission has stepped in to resolve various issues involving NRAs in the electronic communications industry. And although it's always a good idea to make the case that competition authorities need a good reason to step in when there's a regulatory failure, precisely what counts as such is often unclear [63][92].

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[91] Kianzad, B., & Minssen, T. (2018) How Much Is Too Much: Defining the Metes and Bounds of Excessive Pricing in the Pharmaceutical Sector. *EPLR, 2*, 15.

[92] Tóth, A. (2015) The European Commission's 2014 Recommendation on Relevant Product and Service Markets within the Electronic Communications Sector Susceptible to Ex-Ante Regulation. *Eur. Networks L. & Reg. Q.*, 25.

Despite this, it would appear that the Commission has shown deference to industry-specific regulation in practice. e. The Commission, for instance, initiated multiple cases in 1999 regarding excessive prices for fixed-to-mobile calls and associated wholesale charges. Afterwards, when NRAs could step in as intervenors per national electronic communications law, they were given the cases in question. For their excessively high international roaming rates, the Commission issued two separate "statements of objections" to O2 and Vodafone. However, following the implementation of the Roaming Regulation, those investigations were concluded. In sum, this might stand in for a condition, however its applicability is quite hazy and without legal support [64][93].

Finally, Evans and Padilla argued that prohibiting exorbitant pricing is justified only when doing so is necessary to avoid the suppression of innovation in nearby markets. Evans and Padilla added this stipulation because of concern that the existing ones may not be enough to prevent wrongfully acquitted defendants from walking free. If high prices are stifling innovation in neighboring areas, then it is a clear example of how they might distort such markets. But it doesn't rule out the possibility of an anti-competitive impact from other types of high pricing. In keeping with Paulis's thesis, this essay does not think competition authorities should exclusively act in such circumstances [65][94].

This essay concludes by arguing that the following three conjoined elements constitute the extraordinary circumstances that warrant antitrust action against exorbitant prices:

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[93] Fee, P. R., Mialon, H. M., & Williams, M. A. (2004) What is a Barrier to Entry? *American Economic Review, 94*(2), 461-465.

[94] Colangelo, M., & Desogus, C. (2018) Antitrust scrutiny of excessive prices in the pharmaceutical sector: a comparative study of the Italian and UK experiences. *World Competition, 41*(2).

In general, the Commission should be cautious about intervening in instances when there are already enterprise regulators in place, especially if I there really are substantial but also long-lasting obstacles to entry, (ii) the contributory infringement gets to enjoy a dominant market place, as well as (iii) there are a dearth of legal assistance at the European level.

To be clear, the use of Article 102 to ban excessive pricing has never been qualified as such by European courts or the Commission in any judgments or decisions. The likelihood of its acceptance by those authorities in future situations is also low.

5.2. Multiple approaches

The excessive price case law that is governed by EU jurisprudence has developed over the course of time, and there are presently three primary methods of analysis: the efficiency method, the damage principle method, and the proportionality method. Although every one of these methods has its own set of advantages and disadvantages, all three of them have contributed significantly to the formation of the legislation governing excessive pricing in the EU.

The efficiency method is predicated on the concept that pricing distortions need to be properly customized in order to accomplish legitimate economic goals. This is the foundation upon which the efficiency approach is built [31][95].

In most cases, this method uses a two-stage examination to assess whether a price is unreasonable. First, you need to figure out whether the price tag is much greater than what you would consider to be a reasonable asking price. The next thing to do is think about whether or not pricing distortion is really necessary to achieve those ends. The belief that any price that

[95] Danieli, D. J. H. E., Policy, & Law. (2021) Excessive pricing in the pharmaceutical industry: adding another string to the bow of EU competition law. *16*(1), 64-75.

significantly harms customers should be avoided is at the core of the harm principle pricing strategy. The Harm Principle prohibits sellers and suppliers from imposing unfair conditions on buyers, such as obligatory arbitration or long term contracts, and typically requires sellers to provide buyers with clear and accurate information about their products in order to allow buyers to make meaningful choices. In addition, the Harm Principle requires sellers to provide buyers with clear and accurate information about their products.

The proportionality technique analyzes whether the advantages of a certain pricing distortion exceed its disadvantages by comparing the two sets of data. This approach generally evaluates three aspects: (1) the degree to which customers are impacted by the price distortion; (2) the amount of competition that exists at the relevant market level; and (3) the size of the price distortion.

The primary distinction between these three strategies is that each one places more emphasis on a different facet of the EU's excess pricing rule. The Efficiency Approach seeks to determine if a certain price is too high, while the Harm Principle Approach and the Proportionality Approach seek to determine whether a particular price harms customers or hinders competition in the market, respectively [43][96].

The Efficiency Approach states that merchants are free to set whatever price they choose for their goods or services so long as it is not higher than what the market will bear. The primary inquiry that is posed by the Efficiency Approach is about the subject of whether or not higher prices result in increased levels of productivity or efficiency. This strategy, which in most cases is based on economic analysis, does not take into consideration any subjective repercussions that may result from a certain pricing.

[96] Ezrachi, A., Gilo, D. J. J. o. C. L., & Economics. (2009) Are excessive prices really self-correcting? , *5*(2), 249-268.

The Damage Principle is concerned with establishing whether or not a certain price poses a substantial risk of harm to customers. The primary inquiry that is addressed by the Harm Principle is whether or not purchasers would have selected alternative options had they been provided with an accurate, comprehensive, and equitable chance to do so. According to the Harm Principle, retailers are free to charge whatever price they choose so long as it does not significantly impact the quality of life for the target demographic of their customers.

By considering both the degree of price distortion and the amount of existing market competition, the Proportionality Approach determines whether or not a price is excessive. The primary objective of the Proportionality Approach is to guarantee that customers have access to significant options while also preserving healthy levels of market competition. The strategy often makes use of economic analyses, surveys of consumers, and legal precedents as its foundation. In general, the courts have shown a preference for the Efficiency Approach; but, the Harm Principle Approach and the Proportionality Approach have become much more popular during the last several years.

After the Treaty of Rome was signed, European leaders debated high prices from a narrow set of hypothetical vantage points over the first two decades. As stated either by European Court of Justice in Parke, "a higher price for the patented goods compared to the unpatented items does not necessarily constitute an abuse." [66][97]. The court noted in the subsequent Sirena as well as Deutsche Grammophon decisions that the market price of the goods may not always be adequate to reveal such an abuse, but it may be a deciding factor if it is unreasonable by any objective measure and if it is exceptionally high. All three instances

[97] Prakash, G., & Athira, P. (2021) The Stratagems of predatory pricing Under Anti-dumping Law and Competition Law.

before the ECJ were preliminary rulings, which may explain why the court did not go deeply into an examination of whether or not the prices in question constituted excessive pricing. The European Court of Justice was called upon for the first time in General Motor to review and decide on a Commission judgment of excessive pricing. However, that case didn't provide much help since the court ultimately overturned the Commission's ruling because General Motor had already lowered its pricing to reflect the true cost of the operation [65][98].

Prior to the pivotal case of United Brands, there did not exist any analytic framework for exorbitant pricing. First, this same European Court of Justice (ECJ) defined excessive retail prices as a price which bore "no component is considered to the financial value of the product. and then, using the same definition, formulated an analytical framework for inordinate prices, which as the Commission tried to claim included three interrelated approaches: the aforementioned excess could, among others, be identified as that of the main cause if it had possible to calculate this by comparing the circumstance between these the price of the product and its economic value.

Does this suggest a need for a variety of approaches to addressing price gouging in the real world? To start, we can rule out the third possibility right away. To create way for novel techniques in the future, it just requires the wisdom of the ECJ at the moment. However, until date, neither European courts nor the Commission have proposed any "alternative methods." Thus, at first glance, the first two methods seem to be distinct from one another. Absolute profit margin (result of selling price less production costs) is the focus of the first strategy. There is no need for comparisons. It suggests that a big profit margin makes the aggressive nature of a

[98] Calcagno, C., & Walker, M. (2010) Excessive pricing: Towards clarity and economic coherence. *Journal of Competition Law and Economics, 6*(4), 891-910.

pricing immediately apparent in specific situations. Comparatively, the second strategy seems to introduce benchmarking. There are a total of two stages to this process. To begin, profit margins must be assessed by competition authorities. Step two is reached if the profit margin is deemed too high. Second, a pair of parallel prongs form the second stage. The first part of the test determines whether a dominating firm's pricing practices are unfair on their own, while the second part looks at how the firm's prices stack up against those of rivals. On second thinking, though, the distinction between the two seems hazy at best. One strategy zeroes in on the profit margin, whereas the initial part of the second strategy zeroes in on the pricing. Both are synonymous with non-benchmarking. Without a baseline to compare to, determining if a price is too high always comes down to looking at the profit margin. Therefore, in principle, the two should function similarly. The first method has also not been used by the European Commission or any European court. According to this line of thinking, the first strategy is either equivalent to a segment of the second, or it ceases to exist as a strategy altogether. The second method is the only one worth considering, at least for the moment being [43][99].

5.3. Conclusions

Since a number of years ago, both the European Commission and the member states of the EU have acknowledged the existence of an issue with the high price of pharmaceuticals inside the EU. In this paper, we have investigated the development of EU law on exorbitant pricing, evaluated how it has been implemented up to this point, and discussed some prospective avenues for future legislative change.

[99] Ezrachi, A., Gilo, D. J. J. o. C. L., & Economics. (2009) Are excessive prices really self-correcting? *, 5*(2), 249-268.

Measures in EU legislation now restrict unjustified increases in price or exclusivity periods, with the goal of preventing market power and abuse of monopolistic power in drug markets. These requirements include provisions to prevent market power. Although these measures are helpful in avoiding extreme cases of price gouging, it is possible that they are not successful enough when used alone to combat the issue of excessive pricing. In example, they may not be enough to prevent businesses from increasing their prices when their patents run out or when generic competitors enter the market. In addition, the European Commission has proposed a new anti-trust regulation that, if implemented, would give EU authorities the authority to take legal action against cartels that are accused of unfairly boosting medicine costs. Even though this suggestion is still being thought about, it has the potential to become an extra instrument that may be used to fight price gouging and other types of abuse in the pharmaceutical industry. In general, we are of the opinion that more changes need to be made to the legislation governing excessive pricing in the EU in order to more effectively handle this issue across the whole of the economic system. In this context, "increasing the authority of regulators to take action against corporations accused of participating in abusive pricing practices" and "enhancing antitrust regulations to better handle cartels and other types of price manipulation" both fall under this category [30][100].

Among the most contentious issues in European Union competition law is the concept of excessive pricing. Economists, on the one hand, are always complaining about these antitrust proceedings, and on the other, competition authorities only have so many resources at their disposal. This article examines the debate and argues that EU competition law should continue

[100] Howarth, D. N. J. E. C. L. a. C. A., G. Amato, & C. Ehlermann, e., Hart Publishing, Oxford. (2007) Unfair and Predatory Pricing Under Article 82 EC: From Cost-Price Comparisons to the Search for Strategic Standards.

to apply to cases of excessive pricing, but only in the below limited scenarios: When I) there are substantial and long-lasting barriers to entry, (ii) the infringer enjoys a dominant market position, as well as (iii) there is a lack of legal backing at the European level, competition authorities may refrain from trying to intervene in cases of excessive pricing where there are industry-specific regulators. However, when regulatory failings are discovered, regulatory agencies should be able to take appropriate action.

Accordingly, the United Brands methodology for analyzing high pricing incorporates a two-step assessment: first, determining whether the spread between the price charged and the expenses incurred is excessive; and second, determining if the price is unfair on its own or in relation to competing goods. After reviewing the case law, this essay suggests that the first step shouldn't be to identify an overly large profit margin but rather to build a prima facie excessive pricing case. In order to determine whether the dominating enterprise in question is earning a profit due to its high pricing, it is necessary to evaluate this question at the initial stage. In the event that the question is resolved in the affirmative, the investigation will proceed to the next phase [22][101].

Two prongs run parallel to one another in the second stage. The primary argument is that the pricing is itself oppressive. Competition authorities should weigh the price against the product's economic worth under this criterion. Economic value is assessed using a cost-plus framework, which requires consideration of both supply- and demand-side factors (the two sides of any market) in addition to production costs.

The second part of this analysis is looking at how the pricing stacks up against similar items. In practice, there are five types of price comparisons that can be made: I) comparing the

[101] Abbott, F. M. J. A. a. S. (2023) Prosecuting Excessive Pricing of Pharmaceuticals under Competition Law: Evolutionary Development.

dominant undertaking's previous pricing for the same product to its current pricing for other products within the same relevant market, (ii) comparing the dominant undertaking's pricing to that of its competitors in the same relevant market, (iv) comparing the dominant undertaking's pricing for the same product in different geographic markets, (v) comparing the dominant undertaking's pricing for related products in different markets, and (vi) comparing It's important to note, however, that the third standard has less practical significance.

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