2025

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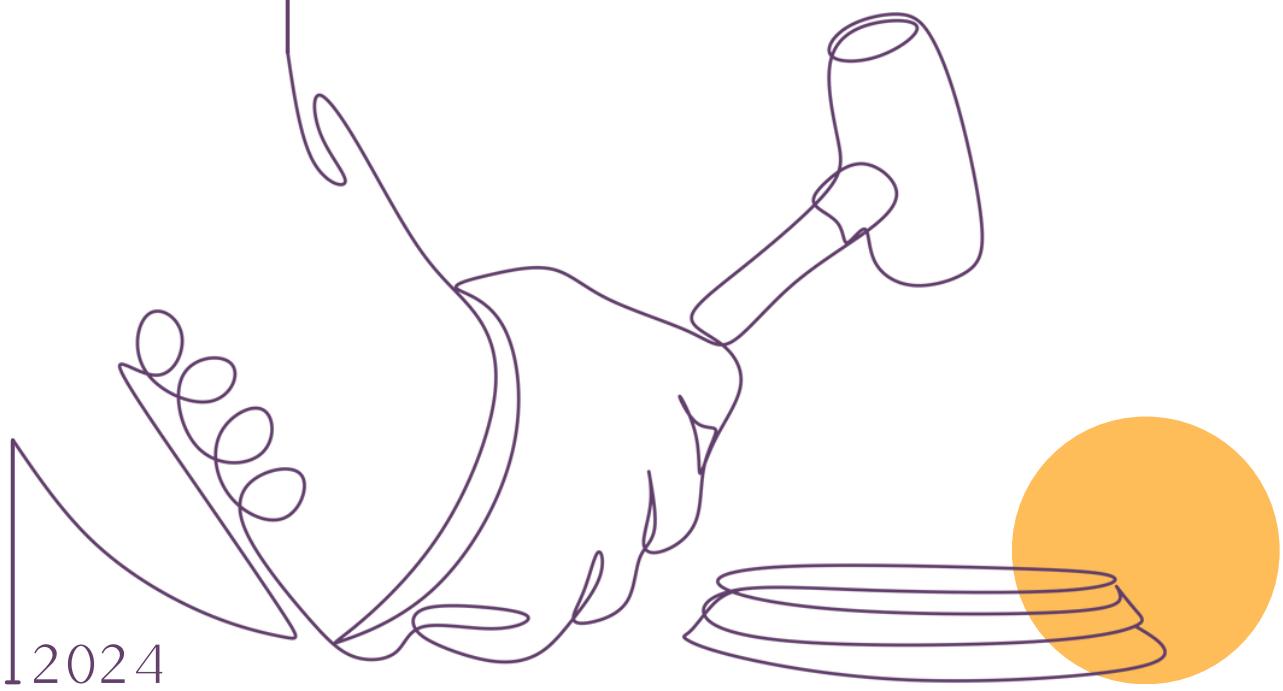
ANTI-TRUST ENFORCEMENT TRENDS

IN 2024-2025



2024

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OVERVIEW

On the anti-trust side, during the year 2024, the Competition Commission of India ("**CCI**") passed 11 prima facie orders under Section 26(1) of the Competition Act, 2002 ("**Competition Act" / "Act**"), initiating investigation in the concerned matters. After the inquiry, in only 1 case the CCI imposed a penalty of INR 213.14 Crore [~USD 26 million] (***Re: Updated Terms of Service and Privacy Policy for WhatsApp users*, Suo Moto Case No. 01 of 2021**) along with behavioral remedies and in another case a cease-and-desist order simpliciter was passed (***TT Friendly Super League Association v. The Suburban Table Tennis Association, Case No. 19 of 2021***).

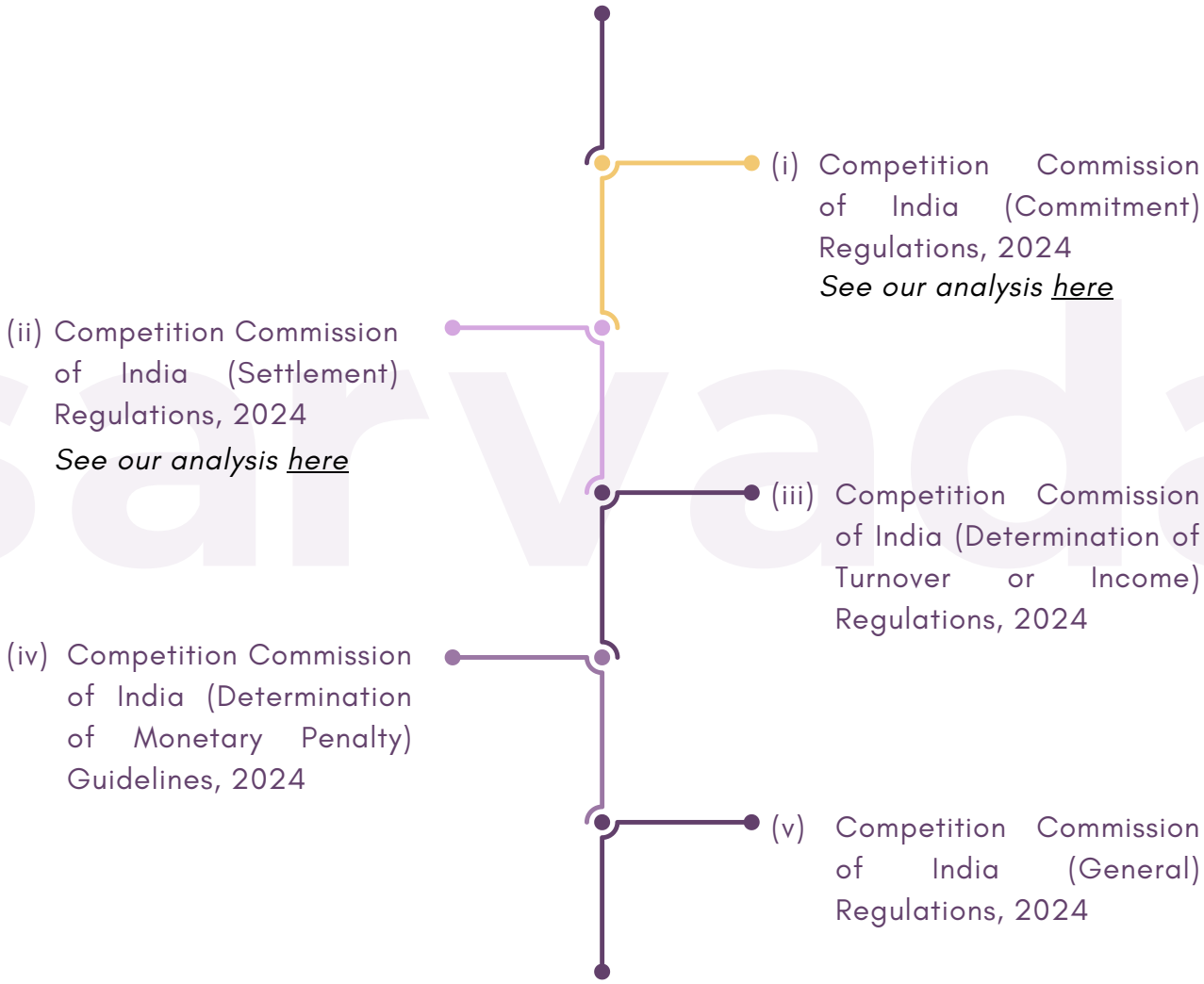
The following table captures the movement in anti-trust matters before the CCI:

SL. NO.	PARTICULARS	NO. OF ORDERS
01	*Prima facie orders* - under Section 26(1) of the Act	11
02	*Dismissal orders* - under Section 26(2) of the Act	36
03	Interim relief/dismissal of interim relief - under Section 33 of the Act	01
04	Orders where CCI found no violation even after Director General concluded presence of violation of the Act - Other Orders	02
05	Imposition of penalty and/or remedies - under Section 27 of the Act	02
06	Total amount of penalty imposed	INR 213.14 Crore [~USD 26 million]

In 2024, in comparison to the previous year, the CCI actively enforced the provisions of the Competition Act to safeguard market competition as well as the stakeholders of the market. This year is marked by significant judicial precedents by courts and tribunals that have established a new trajectory for competition law in India, alongside the CCI's enforcement of key regulations aimed at enhancing procedural clarity and improving the effectiveness of enforcement tools for swift market corrections.

On a broader scale, the CCI **continued its focus on digital markets.** Aligning with **global trends,** the CCI initiated an investigation into Google's practices within the AdTech market. Additionally, the CCI launched **a market study on artificial intelligence ("AI")**, aiming to analyze AI systems, their associated markets, and the potential competition law risks they may pose.

Moreover, several highly anticipated regulations and guidelines came into effect, establishing procedures for the enforcement of the Act's provisions, including:



RECOGNITION OF PRIVATE SETTLEMENTS IN INDIAN ANTITRUST REGIME

SETTLEMENTS UNDER THE INDIAN COMPETITION LAW

The issue of whether a private settlement between parties can halt a competition law inquiry was first examined by the ***Madras High Court in Tamil Nadu Film Exhibitors Association v. CCI.***[1] In this case, the informant agreed to withdraw its complaint against the film association, which was accused of cartelization to restrict the exhibition of films and the use of innovative technologies in Tamil Nadu. The High Court held that the CCI possesses residuary powers under Section 27 of the Competition Act, enabling it to pass any order it deems fit, including permitting private settlements. However, it mandated that such settlements be placed before the CCI for scrutiny, ensuring that anti-competitive practices do not persist despite the resolution of private disputes.

Similarly, in ***Telefonaktiebolaget LM Ericsson (Publ) v. CCI***,[2] the Delhi High Court recognized a private settlement between iBall and Ericsson and directed the CCI to stop its inquiry into allegations of abuse of dominance in patent licensing. The CCI had initially ordered an investigation into Ericsson's alleged bad faith litigation, imposition of unfair conditions, tying and bundling of patents, and excessive royalty demands. However, after iBall withdrew its information and settled its disputes with Ericsson, the High Court held that the CCI could not proceed with the case solely based on a withdrawn complaint. Nevertheless, the court clarified that the CCI retained the authority to initiate a suo motu investigation or revive the case, if necessary.

Despite these judicial precedents, the legislative framework does not currently recognize private settlements to terminate an inquiry. The amendments introduced in May 2023 under Sections 48A and 48B of the Competition Act provide a formal settlement and commitment mechanism which is a mechanism different from the private settlement between parties. This mechanism only allows Opposite Parties under investigation to propose voluntary commitments or settlements at different stages of an inquiry to the CCI's, addressing market concerns. Unlike private settlements between parties, these mechanisms require the CCI's approval and focus on mitigating anti-competitive effects rather than merely resolving disputes between the informant and the opposite party.

[1] 2015 SCC OnLine Mad 7099
[2] W.P. (C) No. 5604 of 2015

LEGAL SANCTITY TO PRIVATE SETTLEMENT IN ANTITRUST REGIME

In ***JCB India Ltd. v. CCI***,[3] the Delhi High Court reaffirmed the enforceability of private settlements in competition proceedings. The case arose from allegations by Bull Machines that JCB had abused its dominant position by initiating bad faith litigation to block the launch of a competing product, 'Bull Smart.' The CCI, upon finding a *prima facie* case, directed an investigation. However, JCB challenged this order before the Delhi High Court. Meanwhile, the parties reached a mediated settlement that resolved all disputes, including those pending before the CCI. The Supreme Court recorded the settlement and disposed of related matters while directing the parties to seek an expedited decision from the Delhi High Court regarding the CCI proceedings.

The Delhi High Court ultimately terminated the CCI inquiry, holding that continued regulatory intervention in a settled dispute would disrupt the finality of mediation and prejudice the commercial interests of the parties. However, the High Court preserved the CCI's right to initiate a suo motu investigation or proceed based on independent information. The Supreme Court upheld this decision, though without commenting on the broader legal questions, thereby affirming the finality of the High Court's ruling. The Supreme Court also upheld the judgment, (while not opining on the questions of law involved), thus, the matter has reached its finality.[4]

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(i) **Judicial Endorsement of Private Settlements** – The decision of the Delhi High Court provides **primacy to mediation and settlement efforts** for competition law disputes as also enshrined under the **Code of Civil Procedure, 1908, fostering a pro-mediation and business-friendly approach.** This reduces the burden on regulatory bodies and encourages alternative dispute resolution mechanisms.

(ii) **CCI's Limited Intervention** – While settlements between private parties are being upheld, CCI retains its right to conduct a suo moto inquiry based on the information from the original complaint or the materials placed in the settlement agreement. **This maintains regulatory oversight while respecting party autonomy.**

[3] 2024 SCC OnLine 5707
[4] CCI v. JCB India Ltd., SLP (C) No. 030864/2024

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(iii) **Need for Legislative Clarity** - Given the judicial inclination towards accepting private settlements, there is a need for codification under the Competition Act to provide legal certainty. A structured mechanism could ensure that private settlements do not undermine competition law objectives while **offering businesses clarity on regulatory exposure.**

(iv) **Enhancing Informant's Participation** - By endorsing private settlements, the Delhi High Court acknowledges the informant's significant role in inquisitorial proceedings. This marks a **fundamental shift towards a more participative and active role for informants in CCI proceedings.** Till now, the CCI has taken a view that Informant has a limited role because the proceeding before the CCI is in nature of in rem proceeding. But after this case, the CCI's stance qua the Informants participative role in the CCI proceedings might undergo a change.

CCI'S EVOLVING JURISDICTION - WHAT BUSINESSES MUST KNOW TO STAY COMPLIANT

The contours of CCI's jurisdiction have been further defined and delineated in terms of dealing with data related issues, contractual disputes, consumer issues, intellectual property matters and matters falling under other statutes.

CCI'S JURISDICTION PERTAINING TO DATA RELATED ISSUES

There exists no inherent conflict or repugnancy between data protection and competition law. The CCI has reinforced its jurisdiction over data-driven competition concerns, affirming that data is not merely a privacy issue but a critical parameter of competition, particularly in digital markets where data aggregation can confer market power and adversely impact competition.

In ***Re: Updated Terms of Service and Privacy Policy for WhatsApp Users***,[5] the CCI underscored its authority to examine anti-competitive conduct arising from data practices.

WhatsApp and Meta challenged this jurisdiction of the CCI before the Delhi High Court, arguing that the matter was already pending before the Supreme Court on issues related to violation of consumer privacy. . However, both the Single Judge and

[5] Suo Moto Case No. 01 of 2021

Division Judge Benches of the Delhi High Court upheld the CCI's jurisdiction, emphasizing that competition law inquiries are distinct from constitutional court proceedings. In appeal against the decision of the Delhi High Court by WhatsApp and Meta, the Supreme Court also dismissed the Special Leave Petitions, affirming that overlapping regulatory proceedings do not preclude CCI's investigative mandate and even though the underlying facts may be the same, but CCI operates in a different realm and can examine the issue if it has anti-competitive effects on the market.

In its final order after the inquiry against WhatsApp and Meta, the CCI emphasized that data-driven enterprises derive competitive strength from the volume, diversity, and quality of the data they control. It scrutinized WhatsApp's updated privacy policy, which imposed broad and opaque data-sharing terms on users, compelling them to accept intrusive data-sharing with Meta without clear alternatives. The CCI found such terms exploitative, as they deprived users of meaningful choice and effectively forced consent under the threat of losing platform access. This was found to be an abuse of dominance, impairing user autonomy and consumer welfare.

Further, the CCI identified exclusionary abuse in Meta's cross-utilization of data across WhatsApp, Facebook, and Instagram. This data aggregation reinforced market dominance by creating significant entry barriers for competitors, enabling Meta to refine algorithms, enhance targeted advertising, and deliver seamless user experiences that rivals could not replicate. This resulted in a "lock-in effect," making it difficult for users and advertisers to shift away from Meta's ecosystem. The CCI concluded that excessive data collection and bundling were not merely privacy concerns but strategic tools for market abuse, distorting competition and entrenching dominance.

This case underscores the CCI's expanding role in digital markets, recognizing that anti-competitive data practices warrant intervention under competition law, irrespective of parallel regulatory frameworks governing data protection.

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(i) **Expanded Jurisdiction Over Data-Related Competition Concerns** – The CCI has firmly established its authority to scrutinize data-related practices that have competition law implications. Courts have upheld that competition law and data protection laws operate independently, allowing parallel proceedings.

SARVADA INSIGHT

(ii) **Data as a Competitive Asset** - The CCI recognizes that in digital markets, data accumulation is not just a privacy issue but a key determinant of market power. Companies leveraging user data for anti-competitive practices, such as exclusionary conduct or exploitative terms can face regulatory scrutiny.

(iii) **Enforcement Against Unfair Data Practices** - The CCI views excessive data collection and opaque privacy policies as potential abuses of dominance. The WhatsApp case underscores the risk of dominant firms using data-sharing mandates to entrench market power and limit user choice.

(iv) **Market-Wide Implications for Businesses:** Companies must ensure their data policies comply with both competition and privacy laws. The CCI is likely to take an increasingly proactive approach in monitoring data-related competition concerns, particularly in cases involving digital giants and cross-platform integration. Forcing users into broad, non-transparent data-sharing agreements may invite CCI intervention. Privacy has become a non-price parameter of competition, requiring firms to prioritize fairness, transparency, and consumer autonomy.

CCI HAS NO JURISDICTION IN PURE CONTRACTUAL/ CIVIL DISPUTES

It is well established that purely inter-party contractual or commercial disputes, which lack market-wide harm, do not fall within the ambit of competition law. Judicial precedents consistently affirm that the CCI does not adjudicate in personam commercial disputes between two parties. The CCI has upheld this stance in several cases:

(a) ***Mr. Rajesh George v. Honda Motorcycle & Scooter India Pvt. Ltd.***,[6] - In this case, the Informant alleged that Honda abused its dominant position in the market of two-wheeler vehicles by unilaterally terminating its Dealership Agreement with the Informant, hence, allegation of abuse of dominance was raised against Honda. The CCI dismissed the information holding that the allegations stemmed from a private commercial dispute rather than competition concerns under the Act.

(b) ***Rekha Oberoi v. MGF Development Ltd.,***[7] - The dispute involved several Informants and Opposite Parties related to the management and operation of Metropolitan Mall in Gurugram. The Informants, owners of retail shops in the mall,

[6] Case No. 16 of 2024
[7] Case No. 28 of 2023

(c) ***Anurag Gupta & Rashmi Gupta v. Greenbay Infrastructure Pvt Ltd.***,[8] – The Informant filed an information against the Opposite Party's failure to provide possession of property within stipulated time frame even after receiving advance payment. The CCI dismissed the complaint as it deals with private contractual issues with Opposite Party, hence, it falls outside the purview of the Act.

It is pertinent to note that, the Supreme Court in ***Info Edge (India) Ltd. v. Google India Pvt Ltd.,***[9] and other connected appeals, has issued notice on a crucial jurisdictional question – whether a commercial suit raising issues under both the Competition Act and the Indian Contract Act, 1872, among other laws, falls within the purview of commercial courts or the CCI. This decision is expected to further clarify the delineation of jurisdiction between competition law and contractual disputes.

CCI HAS NO JURISDICTION IN ISSUES OF CONSUMER DISPUTE

The CCI is primarily concerned with assessing whether anti-competitive agreements or abusive conduct have broader market ramifications. However, it does not adjudicate individual consumer disputes, which fall within the purview of consumer protection laws.

(a) In ***XYZ v. Woodman Electronics India Pvt Ltd.***,[10] the Informant alleged that the Opposite Party is engaged in unfair trade practice by misleading consumers and denying them of crucial information about origin of the products. It was further alleged that unfair practice of the Opposite Party has an adverse impact on consumers. However, the CCI dismissed the information because the said allegation squarely falls under the ambit of Consumer Protection Act, 2019. The CCI said that the alleged conduct of Opposite Party appears to be a consumer issue for which remedy lies with consumer forums.

(a) Similarly, in ***Col. Arvind Kumar v. One97 Communications Ltd.***,[11] the Informant, a consumer of Paytm's services, alleged that Paytm (Opposite Party No. 1) forced him into a postpaid loan facility provided by another entity (Opposite Party No. 2) without consent, despite having sufficient wallet balance. He claimed this amounted to exclusive dealing, restricted consumer choice, and an abuse of dominance under Sections 3 and 4 of the Competition Act. The CCI, however, dismissed the complaint, stating that the allegations pertained to deficient service, misrepresentation, and contractual issues rather than competition law concerns.

[8] Case No. 20 of 2024
[9] SLP (C) No. 2899/2024
[10] Case No. 24 of 2024
[11] Case No. 13 of 2024

These decisions reaffirm that the CCI does not intervene in in personem consumer grievances, as such matters are best addressed under the Consumer Protection Act, 2019.

CCI HAS NO JURISDICTION IN PURE INTELLECTUAL PROPERTY DISPUTES

Judicial trends continue to affirm that the CCI lacks jurisdiction over disputes concerning intellectual property rights ("**IPR**"). Courts have consistently held that matters governed by specialized IPR statutes fall outside the purview of competition law.

(a) In 2023, the Delhi High Court in ***Telefonaktiebolaget LM Ericsson (Publ) v. CCI,***[12] categorically held that the CCI has no jurisdiction to look into patent disputes arising out of the Patent Act, 1970; since the Patent Act, 1970 would prevail over the Competition Act for adjudicating disputes relating to patents [*An appeal against the judgement of the Delhi High Court is currently pending before the Supreme Court (SLP(C) No. 012209/2024*)].

(a) Recently the Delhi High Court again in ***JCB India Ltd. v. CCI,***[13] held that IPR disputes cannot be converted into a competition dispute as it would hamper the statutory rights under various statutes protecting intellectual property.

(a) CCI does not adjudicate issues under trademark law. In ***WinZo Games Pvt. Ltd. v. Google LLC.,***[14]The CCI reaffirmed its approach from the ***Google Search Bias case***,[15] holding that disputes regarding Google's use of competitors' trademarked words as keywords in ad auctions fall under trademark law rather than competition law. The Informant, WinZo Games, alleged that Google's Keyword Bidding compelled competitors to spend excessive amounts on bidding for their own brand names, amounting to passing off and trademark infringement. The CCI dismissed the complaint on this aspect (*CCI directed investigation on other parts of the information*), stating that allowing enterprises to bid on competitors' trademarks fosters competition and enhances consumer choice by broadening the range of advertisements presented to users.

[12] 2023 SCC OnLine Del 4078
[13] 2024 SCC OnLine 5707
[14] Case No. 42 of 2022
[15] Case No. 7 & 30 of 2012

CCI HAS NO JURISDICTION TO INQUIRE ISSUES WHICH FALLS UNDER OTHER STATUTES

While the CCI is empowered to regulate competition in markets, it lacks jurisdiction over issues that fall within the purview of other specialized statutes.

(a) In ***M/s AGI Greenpac Ltd. v. M/s Bhagyanagar Gas Ltd.,***[16] the Informant challenged the Opposite Party's refusal to permit the use of its natural gas pipeline for third-party gas supply under a contractual arrangement. The CCI declined to interfere, noting that the Petroleum and Natural Gas Regulatory Board (PNGRB) Act, 2006 and its regulations expressly prohibit such agreements. Since the dispute was governed by a statutory bar under the PNGRB Act, it did not warrant CCI's intervention.

(a) Additionally, in ***Re: Mr. Shine P. Sasidhar, Advocate and Kerala State Road Transport Corporation***,[17] the Informant alleged that the Kerala State Road Transport Corporation abused its dominant position by charging excessive fares during peak pilgrimage seasons. The CCI dismissed the complaint, ruling that fare fixation and exclusivity grants are policy matters governed by the Motor Vehicles Act, 1988, which fall outside the scope of competition law.

SARVADA INSIGHT

(i) **Establishing market harm and anti-competitive effect is critical** - Businesses seeking to invoke CCI's jurisdiction must demonstrate market-wide harm, not just a private dispute. The burden of proof lies on the Informant to establish that the conduct in question impairs competition and prejudices market stakeholders. Matters involving inter-party contractual disputes, consumer grievances, intellectual property conflicts, and issues governed by other statutes generally fall outside its jurisdiction.

(ii) **Jurisdictional Challenges as a Defense Strategy** - As a defence mechanism, when face with antitrust scrutiny, parties involved must assess whether a jurisdictional challenge is viable, particularly if the dispute is rooted in contractual obligations, consumer issues, or statutory regulations.

[16] Case No. 08 of 2024
[17] Case No. 38 of 2022

SARVADA INSIGHT

(iii) For businesses operating in regulated sectors (e.g., telecom, natural gas, IP-driven industries), be aware that sectoral laws may override CCI jurisdiction, necessitating a dual compliance approach. It is well settled that the regulatory authorities or courts which are better equipped to deal with the sectorial issues or disputes that falls outside the purview of CCI will first adjudicate and then only the CCI can start the inquiry under Section 26 of the Act (***CCI v. Bharti Airtel Ltd.***[18]).

CCI TIGHTENS THE CLOCK - STRICT ENFORCEMENT OF STATUTORY LIMITATION FOR FILING CASES

The aspect of limitation is rooted in the principle that a regulator should look at a conduct which has caused market distortion in the recent past or continues to be so. An action which happened way back and is not subsisting does not cause market distortion, and thus not an enforcement priority. This will help the CCI to allocate its resources judiciously and focus in prioritizing enforcement on the anti-competitive practices which cause market distortion.

Under the Act, an information must be filed within three years from the date on which the cause of action arises; otherwise, it stands barred by statutory limitation. However, the CCI retains discretion to entertain a delayed filing if it is satisfied that there was sufficient cause for the delay.

In ***Mr. Rajesh George v. Honda Motorcycle & Scooter India Pvt. Ltd.,***[19] the CCI, for the first time, invoked the statutory limitation under Section 19 of the Act to dismiss the information, holding that the cause of action had arisen in 2018, and the Informant had failed to demonstrate sufficient reason for the delay in filing.

SARVADA INSIGHT

(i) **Tightened Procedural Discipline** - The CCI's firm stance signals a broader shift towards stricter procedural adherence. Informants will now need to ensure timely filings or provide compelling justifications for delays. The threshold for "sufficient cause" may become more stringent, leading to increased scrutiny of delay condonation pleas.

[18] (2019) 2 SCC 521
[19] Case No. 16 of 2024

SARVADA INSIGHT

(ii) **Rise in 'Continuing Cause of Action' Arguments** - To circumvent the statutory limitation, parties may strategically frame their allegations or cause of action as ongoing violations rather than isolated instances. However, the CCI is likely to impose a higher burden of proof, requiring clear and demonstrable evidence of sustained anti-competitive effects.

(iii) **Judicial Review and Evolving Precedents** - Given that this is the first dismissal purely on limitation grounds, National Company Law Appellate Tribunal ("**NCLAT**") and higher courts may see an uptick in appeals challenging CCI's interpretation of the limitation period. The judiciary's approach will shape whether this trend solidifies or undergoes refinement.

(iv) **Impact on Market Conduct and Compliance Strategies** - Businesses facing potential antitrust issues in the market will need to monitor those anti-competitive behavior proactively. Delayed action might no longer be an option, pushing companies to adopt immediate legal recourse strategies.

EXPANDING THE SCOPE OF 'ENTERPRISE' - CCI'S TIGHTENING GRIP ON ECONOMIC ENTITIES

To establish abuse of dominance, the threshold inquiry is whether the entity in question qualifies as an 'enterprise' under Section 2(h) of the Act. The definition of 'enterprise' is broad, encompassing all entities engaged in economic activities, irrespective of their commercial or non-commercial nature.

In ***TT Friendly Super League Association v. The Suburban Table Tennis Association***,[20] the CCI reaffirmed that national sports federations fall within the ambit of 'enterprise,' holding that even non-commercial economic activities are subject to competition law. The case concerned a table tennis association's unjustified restriction on players participating in unaffiliated tournaments, effectively erecting barriers for independent organizers, stifling competition, and denying market access.

The sole exemption from being classified as an 'enterprise' applies to government entities performing sovereign functions, including those related to atomic energy, currency, defense, and space. In ***Metallurgical Products India Private Limited v. Department of Atomic Energy ("DAE") and IREL (India) Ltd.,***[21] the CCI ruled that the DAE was exempt, as its regulatory role in licensing and import restrictions

[20] Case no. 19 of 2021
[21] Case No. 33 of 2023

pertained to sovereign functions under the Government of India (Allocation of Business) Rules, 1961. Similarly, policy-making government bodies remain outside the scope of 'enterprise,' as reaffirmed in ***Travel Agent Association of India v. CCI***.[22]

However, when a government entity engages in commercial or economic activities, it is subject to competition law. In ***Beach Mineral Producers Association v. IREL (India) Ltd.***,[23] the CCI emphasized that while IREL extracts rare earth elements, its activities unrelated to atomic energy production do not qualify as sovereign functions, thereby making it an 'enterprise' under the Act. Likewise, the NCLAT in ***Ghaziabad Development Authority (GDA) v. CCI,***[24] held that GDA, a government entity responsible for housing development for economically weaker sections, does not perform a sovereign function and is thus subject to competition law.

These rulings signal a stringent and expansive application of competition law, ensuring that entities, whether private or public, exercising market power in an economic capacity do not escape regulatory scrutiny under the guise of non-commercial or sovereign functions.

SARVADA INSIGHT

(i) The CCI and NCLAT's recent rulings reaffirm the expansive scope of 'enterprise' under Section 2(h) of the Act, establishing that any entity engaged in economic activity, whether commercial or non-commercial, falls within the purview of competition law. The decision in *TT Friendly Super League Association* underscores a **broader enforcement approach,** extending scrutiny to associations, non-profits, and regulatory bodies wielding economic influence.

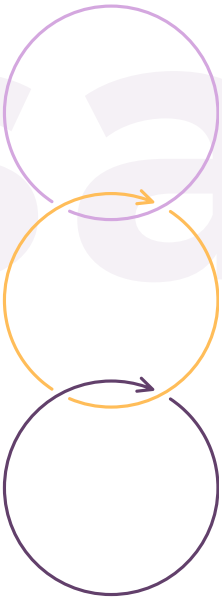
(ii) The application of competition law to sports federations and development authorities reflects an increasing regulatory focus on entities that exercise market power under the guise of non-commercial functions. This aligns with **global trends, where antitrust regulators have scrutinized governing bodies in tennis and football** for anti-competitive conduct. Going forward, we **anticipate heightened legal challenges against regulatory bodies, federations,** and state undertakings operating in markets with significant economic impact.

[22] Competition App. (AT) No. 26 of 2020
[23] Case No. 26 of 2022
[24] Competition Appeal (AT) No. 26 of 2018

RAISING THE BAR - STRICTER EVIDENTIARY STANDARDS IN CARTEL CASES

Cartels are regarded as the most pernicious form of anti-competitive conduct, given their inherent lack of pro-competitive justification. Consequently, under the scheme of the Act, cartels falling within the ambit of Section 3(3) are treated as per se violations, with the burden of proof shifting to the alleged cartel members to demonstrate that they have not violated the provisions of the Act.

Recent decisions suggest an increasing evidentiary threshold for establishing a violation under Section 3(3) and a relaxation in statutory trend as well of reverse burden of proof. In ***India Glycols Ltd. v. Indian Sugar Mills Association,***[25] the Informant alleged cartelization by sugar mills, sugar mill associations, public sector oil marketing companies ("**OMCs**"), and Public Sector Undertakings ("**PSU**") in ethanol procurement, citing price fixing and bid rigging. However, the CCI found no contravention due to insufficient evidence, highlighting:



- Lack of proof of cartelization or price-fixing by sugar mill associations;
- Absence of corroborating "plus factors" to support price parallelism claims against sugar mills; and
- Meetings held by Ethanol Manufacturers Association were not found to have contributed to anti-competitive behaviour and several sugar mills' matching bids were explained through proximity transport costs.

Similarly, in ***XYZ v. PCMM Integral Coach Factory,***[26] the CCI declined to initiate an investigation into alleged bid rigging, holding that mere price parallelism, without supporting "plus factors," was insufficient to establish a *prima facie* case.

In ***Star Cement v. CCI,***[27] in a writ jurisdiction, the Gauhati High Court set aside a CCI prima facie order, emphasizing that the Informant failed to demonstrate an adverse effect on competition. The Court noted that, since cartel members' prices varied, the claim of collusion lacked merit.

[25] Case No. 21 of 2013
[26] Case No. 18 of 2023
[27] 2024 SCC OnLine Gau 1473

These rulings indicate a higher threshold for cartel enforcement, reinforcing the necessity for Informants to substantiate allegations with clear evidence of collusion, coordinated conduct, and market impact.

SARVADA INSIGHT

(i) On an average, annually, 40 to 50 cases alleging violations of Section 3 and/or Section 4 of the Act are filed before the CCI. However, the majority of them are dismissed at the *prima facie* stage, with only a limited number of them meeting the threshold for further investigation. The CCI has adopted a stringent approach, initiating probes only where the Informant presents substantial material facts and demonstrates a tangible effect on the market. This reflects a more holistic assessment framework, where the CCI evaluates complaints not in isolation but in the broader context of market stability and competitive dynamics. The CCI is increasingly requiring Informants to substantiate cartel allegations with direct or circumstantial evidence demonstrating market harm. This evidentiary rigor aligns with international best practices, emphasizing an effects-based approach.

(ii) Historically, writ courts have adopted a hands-off approach when it comes examining the validity of CCI's prima facie order on merits (***CCI v. Bharti Airtel Ltd.*** [28]). However, the Star Cement judgment [29] signals a potential shift, wherein courts may demand a clearer demonstration of anti-competitive harm before allowing investigations to proceed.

(iii) Given that cartelization inherently involves secretive and collusive behavior, proving it remains challenging. Informants must now strategically present robust economic analysis, documentary proof, and behavioral evidence to satisfy the CCI's increasingly stringent threshold for initiating an investigation.

(iv) The growing reliance on "***plus factors***" - such as communication evidence, coordinated bidding patterns, and industry-wide supply restrictions suggests that inquiry must go beyond alleging price parallelism and demonstrate how collusion is distorting market dynamics.

[28] 2019 2 SCC 521
[29] 2024 SCC OnLine Gau 1473

CCI'S EVOLVING PLAYBOOK ON STANDARDS OF DOMINANCE ASSESSMENT

To establish a case of abuse of dominance, the CCI first delineates the relevant market and then assesses whether the entity holds a dominant position within it. Only after determining dominance does the CCI examine potential abusive conduct.

MARKET SHARE

Section 19(4) of the Act provides twelve factors for assessing dominance which includes market share of the enterprise. However, in ***InstaAstro Technology Pvt. Ltd. v. Astrotalk services Pvt. Ltd.,***[30] the CCI clarified the evidentiary standards required to substantiate these factors. The informant had relied solely on media statements by Astrotalk's CEO, claiming an 80% market share, to establish dominance. The CCI held that such statements, often intended for marketing and public relations, cannot be the sole basis for determining dominance and emphasized on lack of any other pieces of evidence to substantiate the dominance of the party.

Similarly, in ***Rajiv Rai Sachdev v. Procter & Gamble Hygiene and Health Care Ltd and Ors,***[31] the CCI emphasized that a high market share (~54.8%) alone is insufficient to establish dominance. It found that the opposite parties did not meet the threshold of being able to "*operate independently of competitive forces*" or "*affect competitors, consumers, or the relevant market in their favor*". The presence of other significant competitors with a combined market share of approximately 32.2% was a key consideration.

VERTICAL INTEGRATION OF THE ENTERPRISE

Vertical integration is a crucial factor in assessing an enterprise's dominance, particularly in cases involving digital platforms. When a platform's vertical integration generates strong network effects, it can effectively lock users into its ecosystem, creating significant entry barriers and hindering the expansion of existing competitors.

In ***Re: Updated Terms of Service and Privacy Policy for WhatsApp Users,***[32] the CCI recognized that the integration of Meta's platforms - Facebook, Instagram, Messenger, and WhatsApp - granted Meta an undue advantage by facilitating cross-

[30] Case 22 of 2024
[31] Case No. 39 of 2023
[32] Suo Moto Case No. 01 of 2021

platform data sharing. The CCI emphasized the critical role of data in determining market dominance, observing that such extensive data integration amplified network effects. This, in turn, enhanced Meta's targeted advertising capabilities, reinforced its market power, and lowered per-user costs due to economies of scale and scope. As a result, Meta's dominant position was further entrenched, significantly impeding users' ability to switch to competing platforms.

SARVADA INSIGHT

(i) These cases underscore the CCI's evolving approach to dominance assessment, moving beyond simplistic reliance on market share to a **more nuanced evaluation of economic realities, competitive constraints, and evidentiary rigor.**

(ii) These recent considerations of CCI in assessing dominance of an enterprise, wherein it has **not relied solely on the factor of high market shares or lack of clinching proof of evidence of high market share,** shows a new trend for the Informant to place a comprehensive study of the market while pleading their case before the CCI under section 4 of the Act.

(iii) The inquiry must also **substantiate other factors of dominance** as mentioned under Section 19(4) of the Act with a focus on **vertical integration, data-driven advantages, and the presence of competitive constraints** for establishing a higher threshold for proving dominance. Going forward, the CCI's scrutiny is likely to extend further into digital platforms and data-centric businesses, reinforcing the need for well-substantiated claims in competition law cases.

(iv) This evidence-based approach to assessing dominance provides relief to large companies operating in competitive markets, protecting them against frivolous litigation for alleged abuse of dominance.

SHIFTING GEARS - CCI'S MOVE TOWARDS EFFECTS - BASED ANALYSIS IN DOMINANCE CASES

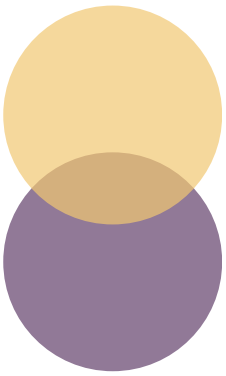
The CCI is required to conduct an effect-based analysis when assessing abuse of dominance under Section 4 of the Act by evaluating the anti-competitive effect caused by the conduct in question.

This shift towards an "***effects-based test***" gained prominence following the NCLAT's decision in ***Google LLC & Anr. v. CCI & Ors.***[33] (March 2023), where it was held that Section 4 cases must be assessed based on their competitive effects rather than a per se approach. The NCLAT emphasized that the determination of abusive pricing practices must consider all surrounding circumstances, including the effects of the conduct on competition.

The CCI reaffirmed this approach in ***TT Friendly Super League Association v. The Suburban Table Tennis Association,***[34] where it analyzed the competitive harm caused by restrictions on players from participating in tournaments organized by unaffiliated entities. The CCI concluded that such restrictions created entry barriers, stifled competition, and denied market access, amounting to an abuse of dominance.

Additionally, in *Re: Updated Terms of Service and Privacy Policy for WhatsApp users,*[35] the CCI brought more clarity on the scope of the effects-based doctrine under Section 4, clarifying that:

> Potential or likely anti-competitive effects are sufficient to establish abuse of dominance; actual harm need not be proven.



> Competition authorities need not wait for adverse effects to materialize before intervening, as delayed enforcement could render corrective measures ineffective.

[33] Competition Appeal (AT) No. 01 of 2023
[34] Case No. 19 of 2021
[35] Suo Moto Case No. 01 of 2021

This evolving jurisprudence underscores the CCI's proactive stance in abuse of dominance cases, particularly in digital markets and platform economies, ensuring that anti-competitive conduct is curbed before it causes irreversible harm to competition.

Similarly, in ***Alphabet Inc. v. CCI***,[36] the NCLAT has reserved its judgment on a pivotal question of law – ***whether the effect-based test for abuse of dominance requires evidence of actual anti-competitive effects or if the mere likelihood of harm suffices***. The ruling is expected to be a landmark decision, **shaping the future application of the effect-based test in India's competition law regime**. Its implications will be particularly significant in curbing anti-competitive practices before they can harm the market. This judgment has the potential to set a decisive precedent, marking a transformative shift in the assessment of abuse of dominance cases in India.

SARVADA INSIGHT

(i) The emphasis on the likely effects standard under Section 4 of the Act is appreciated and is particularly important, especially with the rise in winner takes all platform markets. Dominant entities should **pre-emptively assess their conduct** to avoid regulatory scrutiny.

(ii) Dominant Firms in digital, platform-based, and high-growth sectors must ensure that their practices do not create even a **likely anti-competitive effect,** as CCI's **threshold for intervention tends to be preventive rather than curative.** The idea is that in issues related to abuse of dominance, if the anti-competitive behavior is not prohibited at the earliest, any remedy at a later stage will be too little and too late.

(iii) For the inquiry it reinforces the **importance of demonstrating market effects** in Section 4 complaints. Vague allegations will not suffice; a strong case **must establish likely competitive harm** with **evidence-based market analysis.**

[36] Competition Appeal (AT) No. 04 of 2023

CCI'S STRENGTHENED STANCE - BEHAVIOURAL REMEDIES AND PENALTY REGIME

The CCI has power to pass strict behavioural remedies, orders in the nature of cease-and-desist and monetary penalties under Section 27 of the Act to protect competition in the market.

BEHAVIOURAL REMEDIES

In ***Re: Updated Terms of Service and Privacy Policy for WhatsApp users***,[37] the CCI imposed **behavioural directions and penalty** on Meta, aimed at regulating data-sharing practices within its ecosystem.

The CCI structured these remedies based on the **purpose of data processing:**

For advertising purposes - WhatsApp is **prohibited from sharing user data** with the Meta Group for **five years** (*NCLAT has passed interim stay against this direction of CCI*).[38]

For other purposes - WhatsApp is required to provide **clear disclosures** regarding data sharing, grant users the ability to **manage and modify their data-sharing preferences** and ensure **greater transparency and user control.**

These **behavioural remedies are precedent-setting**, as they reinforce **user choice and transparency** as fundamental principles in digital market regulation.

SARVADA INSIGHT

The CCI's decision in the WhatsApp case signals a paradigm shift in competition enforcement where data-sharing practices are now under strict regulatory scrutiny. Companies leveraging cross-platform data must proactively realign their strategies to ensure compliance and mitigate enforcement risks.

[37] Suo Moto Case No. 01 of 2021
[38] Competition Appeal No. 02 & 03 of 2025

SARVADA INSIGHT

(i) **Cross-Platform Data Sharing Under Watch:** Digital businesses relying on integrated data ecosystems must **reassess their data governance policies** to avoid potential competition law violations. The practice of combining user data across platforms can now invite regulatory intervention, particularly if it limits user choice or creates exclusionary market effects. **Failing compliance may also invite deterrent measures from the CCI directly impacting the business and revenue flow.**

(ii) **Transparency & User Control as Compliance Imperatives:** Companies must **enhance transparency** in data collection and usage, ensuring that users have **meaningful choices** regarding how their data is processed. **Lack of clear consent mechanisms** and **opaque privacy policies** could now be deemed exploitative under competition law.

(iii) **Proactive Compliance to Avoid Regulatory Sanctions:** Given CCI's firm stance, businesses should **conduct internal audits of their data-sharing frameworks,** implement **robust compliance mechanisms,** and, where necessary, **seek regulatory guidance** to pre-empt enforcement actions. Companies operating in data-driven sectors must recognize that **competition law now intersects with data protection and consumer rights.**

CEASE AND DESIST ORDER

The CCI in ***TT Friendly Super League Association v. The Suburban Table Tennis Association,***[39] passed cease and desist order against the Table Tennis association from unjustifiably restricting players from participating in tournaments organized by unaffiliated entities. Any kind of restrictions which create barriers for independent organizers, stifle competition, and deny market access to players and organizers results in violation of Section 4(2)(a)(i), 4(2)(b)(i), and 4(2)(c) of the Act. Further, such restriction are in the nature of exclusive distribution and refusal to deal as defined in Section 3(4)(c) and 3(4) (d) of the Act. However, the CCI **only passed direction to cease and desist without imposing monetary penalty** because Opposite Parties have already **undertaken corrective measures** to address the concerns.

[39] Case No. 19 of 2021

MONETARY PENALTY

The CCI has power to impose monetary penalty under Section 27(b) of the Act to protect the competition in the market.

Maximum penalty calculated upon global turnover

In the Indian competition law regime, penalty is calculated according to "relevant turnover" which is the turnover of the specific products or services involved in the anti-competitive violation (***Excel Crop Care Ltd. v. CCI***).[40] After the **amendment in Section 27(b) of the Act,** the maximum amount of penalty that can be imposed on an enterprise is 10% of the "**global turnover**" as derived from all the products and services by a person or an enterprise violating the Act. However, Clause 3(6) of the Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024 ("**Penalty Guidelines**") further clarified that CCI will only consider global turnover when determination of relevant turnover is not feasible. For instance, the CCI in ***Re: Updated Terms of Service and Privacy Policy for WhatsApp users***,[41] has imposed monetary penalty of INR 213.14 Crore, which is 4 % (four per cent) of the average total relevant turnover [***NCLAT has passed interim stay against CCI's monetary penalty on Meta upon deposition of 50% of penalty amount*** [42]].

New method of determining penalty by CCI

Harmonizing with Section 27 of the Act, to bring in more transparency in the process, the CCI has introduced new method of determining penalty via Clause 3 of the "**Penalty Guidelines**". Although these Penalty Guidelines are merely instructive and not mandatory in nature, but it does provide a due process and estimated risks and exposures for enterprises violating the Act.

Ascertain relevant turnover of the enterprise by calculating relevant turnover of three years preceding the year in which the Director General's investigation report is received (in some cases, the CCI may consider the relevant turnover of three years preceding the contravention).

[40] (2017) 8 SCC 47
[41] Suo Moto Case No. 01 of 2021
[42] Competition Appeal No. 02 & 03 of 2025

SECOND STEP

CCI would first consider amount up to thirty percent of the average relevant turnover or income.

Then CCI would adjust the penalty considering factors, such as nature and gravity of the contravention, nature of industry, sector affected, etc.

THIRD STEP

FOURTH STEP

The CCI would further adjust the penalty subject to the legally recognized maximum penal amount of ten percent of average relevant turnover or income, by considering aggravating and mitigating factors laid down in Clause 3(2) of the Penalty Guidelines.

Where the determination of relevant turnover is not feasible, the CCI may consider the global turnover.

FIFTH STEP

The Penalty Guidelines laid down the following **aggravating factors** to calculate the penalty:

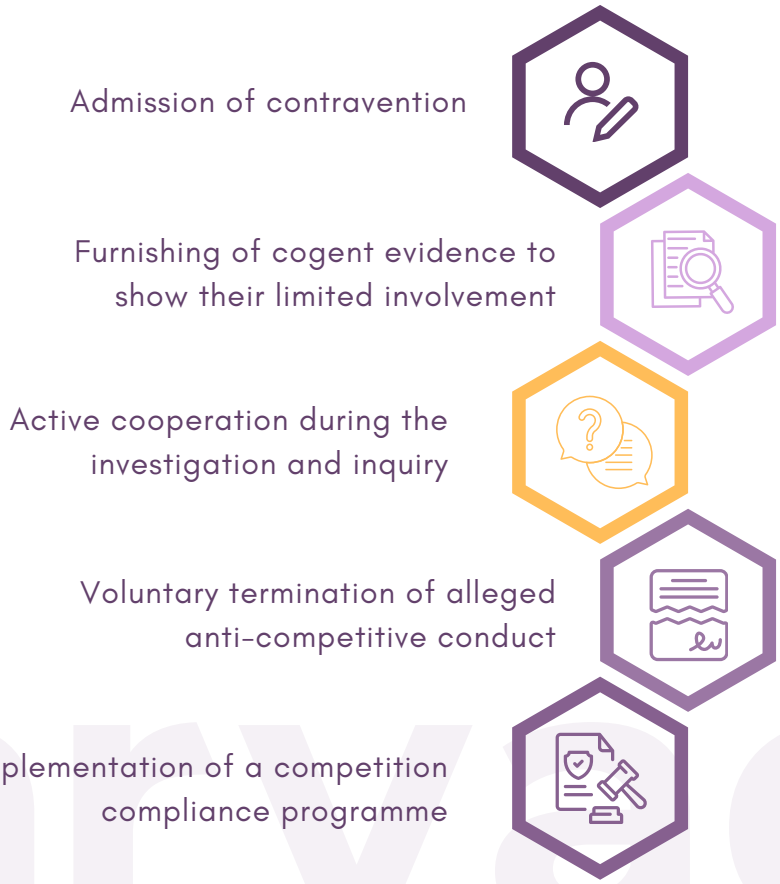
Duration of the contravention/ involvement

Role played by the enterprise in the contravention

Recourse to coercive or retaliatory measures on other enterprises to participate in the contravention

Repeated contravention

The Penalty Guidelines laid down the following **mitigating factors** to calculate the penalty:



Interest accrual in penalty

The Delhi High Court in ***GEEP Industries (India) Pvt. Ltd. v. CCI*** [43] rectified the CCI's order dated 18.07.2023, which sought to recover interest on a penalty imposed for cartelization in the dry cell battery market. The CCI's final order was issued on 10.12.2018, but the demand notice for recovery along with interest at 1.5% per month calculated from the date of the final order, was served nearly five years later, on 18.07.2023.The High Court held that, under Regulation 5 of the erstwhile **CCI (Manner of Recovery of Monetary Penalty) Regulations, 2011**, interest is leviable only if the penalty is not paid within the period specified in the demand notice. Accordingly, the CCI cannot recover interest retrospectively from the date of its final order but only from the date specified in the demand notice.

[43] 2024 SCC OnLine Del 3086

Further, in ***Godrej & Boyce Manufacturing Co. Ltd. v. CCI,***[44] the NCLAT clarified that a stay on the final order does not automatically waive interest accrual on the penalty amount. The appellant proposed depositing the penalty within three weeks, provided the accrued interest was waived. However, the NCLAT rejected this plea, holding that mere pendency of an appeal does not justify waiver of interest.

The **CCI (Manner of Recovery of Monetary Penalty) Regulations, 2025**, retain a similar framework for interest accrual. Enterprises can, therefore, challenge any CCI attempt to levy interest retrospectively from a date earlier than that specified in the demand notice, relying on these judicial precedents.

SARVADA INSIGHT

(i) Multinationals operating in India should take comfort in the fact that penalty on global turnover is not automatic. The burden lies on the CCI to prove that relevant turnover cannot be determined. This presents a **viable defence against excessive penalties.**

(ii) The **inclusion of mitigating factors** (such as cooperation during investigation, compliance programs, and voluntary termination of conduct) means that **proactive compliance strategies** can significantly reduce penalty exposure.

(iii) Businesses must recognize that **penalties are no longer arbitrary but follow a structured approach.** However, the introduction of **global turnover as a penalty base, even if conditional, signals stricter enforcement for multinational enterprises.** Proactive **competition compliance and legal preparedness** will be critical in mitigating risks.

(iv) Companies facing monetary penalties should **carefully assess demand notices** and ensure timely payment to avoid accumulating unnecessary interest.

(v) Since the NCLAT has held that stay on the CCI's final order do not waive interest, enterprises should evaluate whether **depositing the penalty upfront** on receipt of demand notice is financially preferable to **potentially accruing additional liability.**

[44] Competition Appeal (AT) No. 18 of 2019

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