

# Assessing the Success of Leniency Provisions of the CCI in Uncovering and Deterring Cartel Activity

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## I. Abstract

This research paper evaluates the effectiveness of the leniency provisions of the Competition Commission of India (CCI) in uncovering and deterring cartel activity. It investigates the theoretical and empirical frameworks surrounding cartel behaviour and leniency policies, with a focus on the Indian context. It studies the trends in the imposition of lesser penalties under Section 46, and examines the challenges of the leniency programme since its inception in 2009. An analysis of global antitrust frameworks helps to understand the potential improvements for India's antitrust framework. The findings suggest that the effectiveness of the leniency programme has been underwhelming; addressing inefficiencies in procedures and increasing awareness among enterprises could help with the same.

**Keywords:** Leniency, Cartels, Antitrust legislation, CCI

## II. Introduction

The **Competition Act of 2002** in India was designed to regulate anti-competitive behaviour. The responsibility to enforce this law rests with the **Competition Commission of India (CCI)**, which works with the support of the **Office of Director General (DG)**. The primary goal of the Act is to deter practices which adversely impact competition, to promote fair competition, to protect consumer interests, and to ensure freedom of trade.

The Act targets three main areas - anti-competitive agreements (including cartels), abuse of dominant positions, and combinations like mergers and acquisitions. Under **Section 2(C)**, 'cartels' refer to those agreements between producers, sellers, distributors, or service providers, which have the purpose of controlling production, distribution, sale, or price control, some or it is presumed that these aspects have an appreciable adverse effect on competition (AAEC).

It is not easy to detect cartels, which are an extreme and harmful example of anti-competitive behaviour, since these activities are of a secretive nature. Still, the threat of large penalties under the leniency programme pushes cartel members to disclose their activities in some cases. This programme is outlined in the Competition Act and is detailed in the **Lesser Penalty Regulations of 2009 and amended regulations of 2017**. It gives incentives for disclosure, such as whistleblower protection and penalty reductions.

The CCI introduced Lesser Penalty Regulations in 2009, in which individuals involved in cartels can apply for leniency. The first applicant can get penalty reduction of upto 100%, while subsequent applicants are eligible for lesser reductions in penalty. These penalty reductions were further defined in the 2017 amendments.

However, despite these provisions, India's leniency programme has not been as successful as those of the USA and Australia. It is plagued by issues such as procedural delays, resource constraints, and limited transparency and predictability. India's competition regime is still young as compared to the

well-established anti-competitive policies in the EU and the USA. The CCI is continuously evolving its approaches so as to better combat cartels and promote fair competition.

### III. Theoretical Framework

In Economics, it is through **market competition** that firms interact with one another as suppliers of commodities. '**Perfect competition**' is an ideal market structure in which multiple firms are suppliers of relatively homogeneous commodities, with no barriers to entry. In this market structure, both consumers and sellers operate with full and symmetric information. Uniform pricing prevails in the market and is equal to the marginal cost of production, which is also uniform for all firms. Due to this, firms cannot accumulate super-normal profits even in the long-run, ensuring consumer welfare. Though this is an idealised market scenario, it serves as a benchmark for real-world market dynamics.

However, in real-world markets, market power is not equally distributed among firms, which leads to **imperfect competition**, which manifests in the form of market structures like monopolistic competition, monopoly and oligopoly. Cartels, which are small colluding groups of firms which hold significant market share, are a feature of **oligopolistic markets**. Firms in a cartel do not compete with each other on prices and instead, set a price higher than the competitive price for their members, ensuring super-normal profits. This limits healthy economic growth, consumer welfare, innovation and investment.

Game theory can be useful in understanding how collusion can be profitable for firms. However, **collusion is a repeated game and hence can also give firms or individuals incentive to cheat**. This makes cartels inherently unstable. The Prisoner's Dilemma game explains this tension between cooperation (maintaining the cartel) and self-interest (defecting and applying for leniency). In the equilibrium state of this game, both the rational players do not cooperate even though that would yield the best results overall. In the context of cartels, this implies that members would have incentive to break collusive agreements to take on more market share. This creates fault lines which deepen in the face of exogenous shocks like regulations and economic constraints, which can lead to cartel failure.

**Leniency programmes benefit from this dilemma** and use it to uncover cartel activities. They encourage firms to come forward about their participation and reduce penalties for the firm which is the first to self-report. This approach makes use of the natural instability in cartels and creates a race between members to report. This strategy has also been adopted by the CCI.

According to the economic theory of structure-conduct-performance (SCP), firms' behaviour is affected by the market structure, and affects overall market performance. Antitrust policies aim to improve market performance, prevent monopolies and anti-competitive mergers, and penalise collusive behaviour.

## IV. Antitrust Legislation in India

India's antitrust legislation framework provides a framework to keep markets competitive and fair. The key legislation is the Competition Act, 2002, which established the CCI. This Act is a step forward from the **Monopolies and Restrictive Trade Practices Act, 1969**, and is testimony to the evolution of the Indian economy.

The primary aim of this Act is to put a stop to practices which are harmful for competition, to promote healthy market practices, to protect consumer interests, and to ensure freedom of trade. Through this Act, the CCI can halt agreements among firms which threaten competition, it can curb the misuse of the dominant positions held by major companies, and it can regulate mergers and acquisitions which can disrupt market balance. The Act has been amended once, and the latest major update was outlined in the **Competition (Amendment) Act, 2023**, which introduced significant changes, such as the option of settling cases through negotiations, the ability to fast-track the reviewing process of mergers, and an increase in the penalties for anti-competitive behaviour.

The CCI plays a central role in enforcing this Act. It is the primary authority on investigating anti-competitive practices and on their ruling. For investigation, it has the support of the DG, in the form of summoning individuals, collection of documents, conducting dawn raids, and so on. The CCI also plays a role in advocating for competition - it educates businesses and individuals about the benefits of competitive markets. It also collaborates with national and international agencies to enhance its capabilities. It strives to stay updated on trends and make its policies relevant and effective by conducting market studies, research and economic analyses.

A key tool of the CCI to detect and dismantle cartels is its leniency programme, which operates under the Competition Act. This programme offers **reduced penalties to those who cooperate with the CCI and disclose their involvement**. This has been instrumental in a few high-profile cases and has helped garner disclosures.

Through the above-mentioned initiatives, the CCI strives to make the Indian market dynamics fair and consumer-centric.

## V. Leniency Programme of the CCI

The leniency programme of the CCI exploits the fear and mistrust present in cartel groups, and uses it to dismantle them. This programme is a strategic move to promote fair competition and protect consumers from adverse effects of cartels. When **businesses secretly fix prices or decide to limit production to increase their market control**, consumers are negatively impacted due to the artificially high prices and stifling of innovation. Traditional investigative methods such as exposing covert agreements, are often not sufficient since cartels operate in secrecy. Due to this, the leniency programme was introduced by the CCI, to give incentive to cartel members to come forward with information.

This programme operates on a simple and effective principle - the **members who are the first to confess and provide substantial evidence, are given upto a 100% reduction in penalty**. This is a powerful motivator and enables the CCI to collect vital evidence to prosecute the cartel while allowing the whistleblower sufficient leniency. The **subsequent applicants who come forward with valuable information are also allowed for reduction in penalty of upto 50% or 30%**, depending on their timing and how useful the information is. This creates a 'race' among members of the cartel, which increases the chances of uncovering the cartel's operations.

The leniency framework has been outlined in the Competition Act, 2002, and detailed under the Competition Commission of India (Lesser Penalty) Regulations, 2009. These regulations ensure that the process is transparent and fair by providing clear guidelines for both the applicants and CCI. Practically, applying for leniency is a detailed process in which the applicant has to submit an application to the CCI, disclosing information about the cartel activities, participants and supporting evidence. The CCI then evaluates this information and if found substantial and credible, then a grant for penalty reduction can be issued. The applicant has to cooperate fully throughout the investigation and subsequent proceedings.

'**Leniency Plus**' is an extension of the leniency programme and it offers additional leniency to cartel members who disclose information about another cartel while they are already cooperating with the CCI on an investigation. This dual incentive helps detect multiple cartels and also ensures that the whistleblower continues to cooperate with the CCI. The provision for the Lesser Penalty regime is under **Section 46** and it is governed by the **Competition Commission of India (Lesser Penalty) Regulations, 2024**. If the applicant gives full, true and vital disclosures, and applies for Lesser Penalty Plus, then they can be given **penalty reduction of upto 30% for the first cartel**.

The identity of leniency applicants, and the information, documents and evidence they provide, are treated with **utmost confidentiality**. This is a crucial aspect of the programme since it allows cartel members to come forward with fear of exposure or retribution. Confidentiality is also maintained during the investigation to maintain safety of the applicant and to maintain integrity regarding the information provided by them. However, a non-confidential version of the Lesser Penalty application is available for inspection when the investigation report is forwarded to the involved parties. This is done to uphold the rights of defence of the involved parties, so that they can get the chance to prepare their response after going through the evidence. However, the Lesser Penalty Plus application remains confidential in the case of the first cartel and its non-confidential version is not available for inspection to the other involved parties.

India's leniency programme has played a hand in high-profile disclosures, due to which hefty fines were imposed and powerful cartels were dismantled. It also has a deterrent effect - it cautions potential cartel members against the risk of getting caught and being penalised.

## VI. Data Analysis

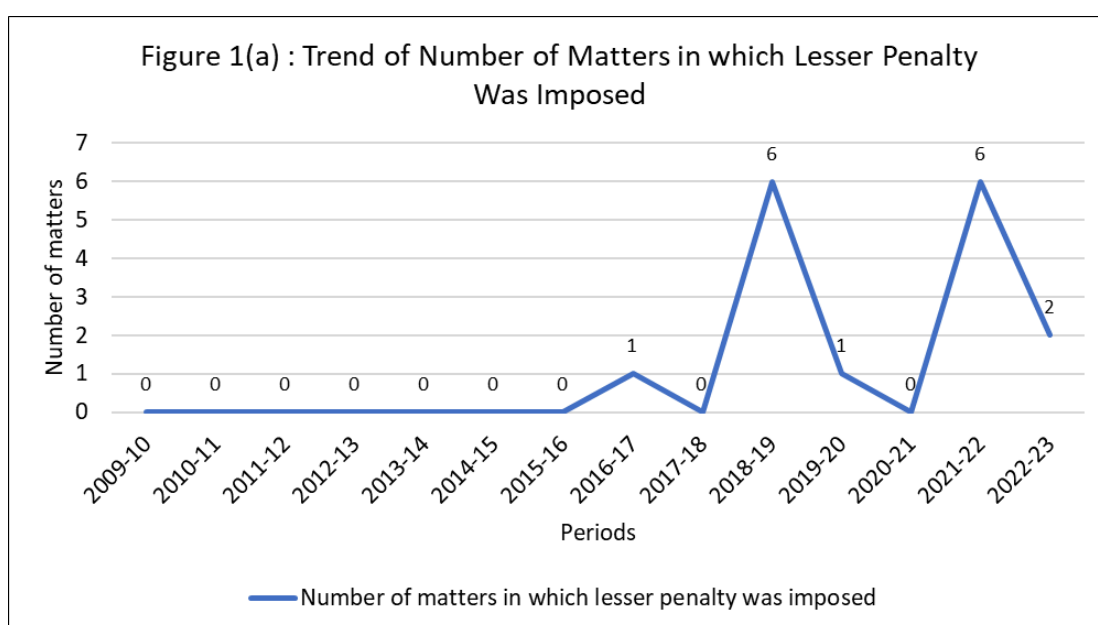
Under Section 27 of the Competition Act, 2002, the Competition Commission of India (CCI) holds the authority to impose penalties on enterprises engaged in cartel activities. These penalties can be substantial, reaching upto three times the annual profit derived from cartel operations or 10% of the turnover for each year the cartel persists—whichever amount is greater. The CCI possesses discretionary power in setting the penalty, considering various factors such as the severity of the violation, the duration and impact of the cartel on consumers and the market, as well as any mitigating or aggravating circumstances. Although the CCI's guidelines offer a structured approach for determining penalties, these penalties are not indexed to inflation or adjusted according to the Consumer Price Index (CPI). Instead, the penalty is directly calculated based on financial metrics, either profit or turnover, from the period during which the cartel was active.

Table 1 has been constructed using relevant data in Annual Reports of the CCI.

**Table 1: Trend of Imposition of Lesser Penalties Under Section 46**

| S. No. | Period  | Number of matters in which lesser penalty was imposed | Total number of enterprises/persons granted 100% reduction in penalty, across cases | Total number of enterprises/persons granted less than 100% reduction in penalty, across cases |
|--------|---------|---|---|---|
| 1.     | 2009-10 | 0   | 0   | 0   |
| 2.     | 2010-11 | 0   | 0   | 0   |
| 3.     | 2011-12 | 0   | 0   | 0   |
| 4.     | 2012-13 | 0   | 0   | 0   |
| 5.     | 2013-14 | 0   | 0   | 0   |
| 6.     | 2014-15 | 0   | 0   | 0   |
| 7.     | 2015-16 | 0   | 0   | 0   |
| 8.     | 2016-17 | 1   | 01  | 0   |
| 9.     | 2017-18 | 0   | 0   | 0   |

|     |         |   |    |    |
|-----|---------|---|----|----|
| 10. | 2018-19 | 6 | 19 | 28 |
| 11. | 2019-20 | 1 | 13 | 08 |
| 12. | 2020-21 | 0 | 0  | 0  |
| 13. | 2021-22 | 6 | 37 | 24 |
| 14. | 2022-23 | 2 | 01 | 10 |



Although leniency provisions were brought out in August, 2009, through the Competition Commission of India (Lesser Penalty) Regulations, **lesser penalty was not imposed in any cases till 2016**. It is only in 2016-17 that lesser penalty was first imposed in India. Since 2016-17, lesser penalty has been imposed in an erratic manner, over the years. This hints at shortcomings in the CCI’s dissemination of information, regarding leniency provisions, in the early years, and possibly, even till the present period. Parties may also have been hesitant to come forward with information due to the new nature of leniency provision, in the early years, however, the same reason cannot hold any more. The ‘Leniency Plus’ mechanism introduced by the CCI in 2023, under Section 46(4), through the Competition (Amendment) Act 2023, is hoped to provide incentive to existing leniency applicants to give additional cartel disclosures.

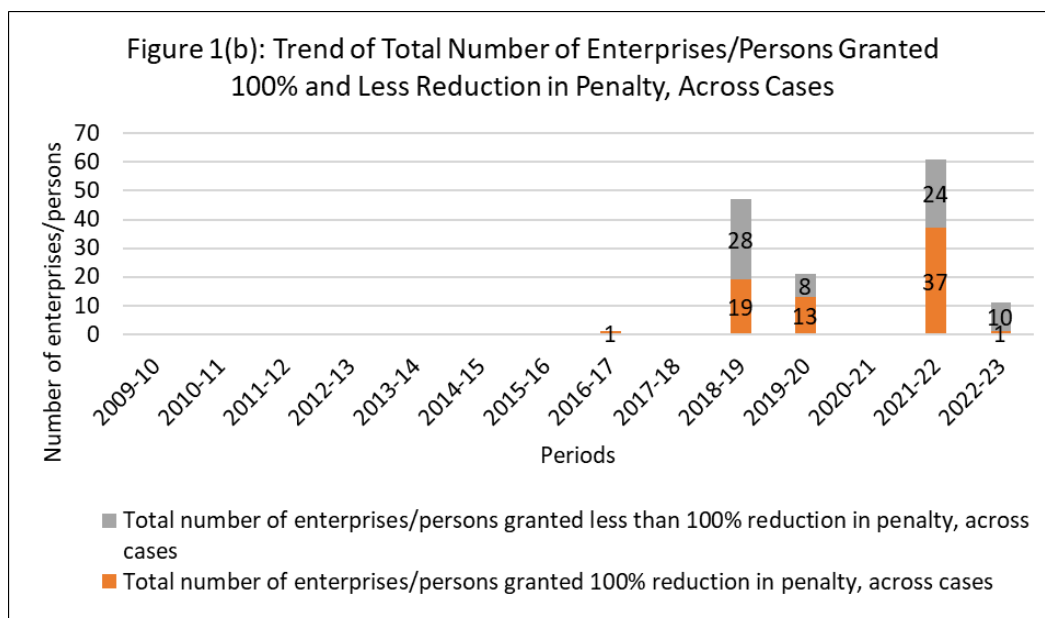


Figure 1(b) shows the total number of enterprises or individuals granted 100% or less reduction in penalty, across years. It also shows the share of enterprises or individuals who were granted 100% reduction in penalty, and the share of enterprises or individuals who were granted less than 100% reduction in penalty.

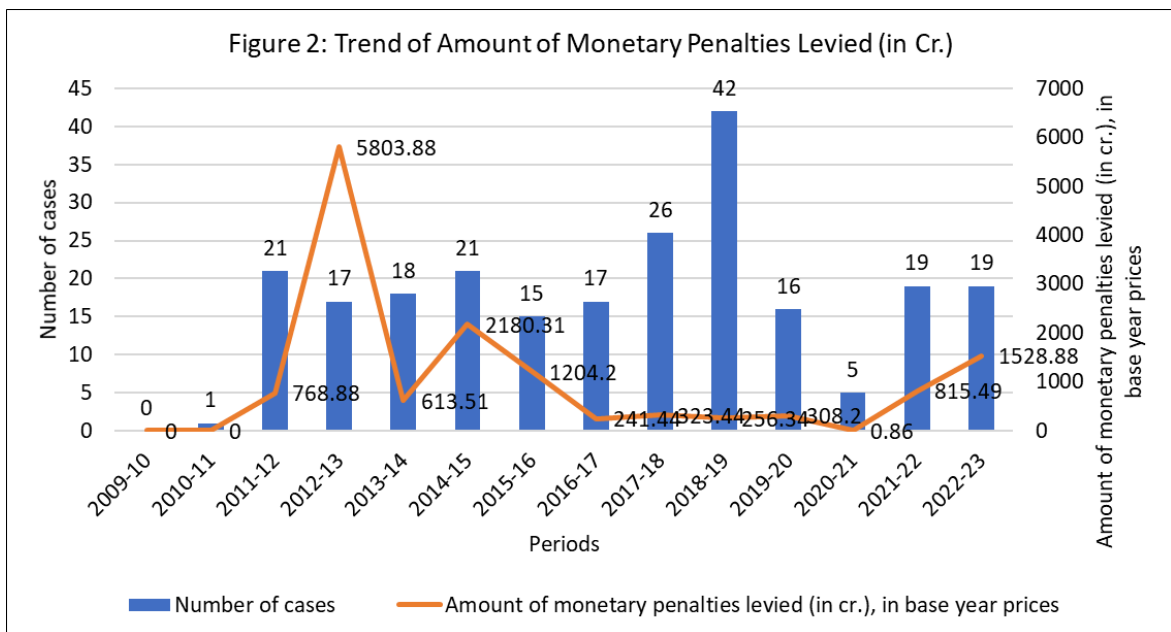
Table 2 has been constructed using Annual Reports of the CCI (for number of cases and amounts of monetary penalties levied over the years), and monthly CPI(Combined) figures made available by the Ministry of Statistics and Programme Implementation. The monetary penalty figures have been adjusted for inflation, using simple average to calculate CPI(C) over a financial year, so as to provide a more accurate basis for comparison over the years in real terms. Base year for 2013-14 and onwards is 2012, and base year for 2011-12 and 2012-13 is 2010.

**Table 2: Trend of Amount of Monetary Penalties Levied (in Cr.)**

| S. No. | Period  | Number of cases | Amount of monetary penalties levied (in cr.) | Average CPI(C) | Amount of monetary penalties levied (in cr.), in base year prices |
|--------|---------|-----------------|--|----------------|---|
| 1.     | 2009-10 | 0               | 0  | -              | 0   |
| 2.     | 2010-11 | 01              | 0  | -              | 0   |
| 3.     | 2011-12 | 21              | 860.38                                       | 111.9          | 768.88  |
| 4.     | 2012-13 | 17              | 7,156.18                                     | 123.3          | 5,803.88  |
| 5.     | 2013-14 | 18              | 688.36                                       | 112.2          | 613.51  |



|     |         |    |          |       |          |
|-----|---------|----|----------|-------|----------|
| 6.  | 2014-15 | 21 | 2,592.39 | 118.9 | 2,180.31 |
| 7.  | 2015-16 | 15 | 1,501.64 | 124.7 | 1,204.20 |
| 8.  | 2016-17 | 17 | 288.28   | 119.4 | 241.44   |
| 9.  | 2017-18 | 26 | 436.65   | 135.0 | 323.44   |
| 10. | 2018-19 | 42 | 357.85   | 139.6 | 256.34   |
| 11. | 2019-20 | 16 | 450.89   | 146.3 | 308.20   |
| 12. | 2020-21 | 05 | 1.34     | 155.3 | 0.86     |
| 13. | 2021-22 | 19 | 1,335.77 | 163.8 | 815.49   |
| 14. | 2022-23 | 19 | 2,672.48 | 174.8 | 1,528.88 |



Number of cases on which the CCI imposed monetary penalties peaked in 2018-19, at 42 cases, and was lowest in 2009-10, at 0 cases. However, the total amount of monetary penalties imposed by the CCI peaked in 2012-13, at Rs. 5,803 cr. (in real terms) with 17 cases, and was lowest (nil) in 2009-10 and 2010-11 with 0 and 1 case, respectively. Despite having the highest number of cases (42) in 2018-19, the total amount of monetary penalties imposed in that period was Rs. 256.34 cr. (in real terms).

By looking at the Annual Reports of the CCI, we can infer that **the CCI's approach to granting leniency is highly contextual and hinges on the timing and nature of the disclosure**. The CCI may grant a 100% reduction in fines only when the applicant reveals a previously unknown cartel, as demonstrated in the Battery Case with Panasonic Energy India Co., Ltd.<sup>1</sup> However, in instances where investigations are already in progress, such as in the Brushless DC Fans Case<sup>2</sup> and the Pune Municipal Corporation Case<sup>3</sup>, the CCI reduced the fines rather than granting full immunity due to the considerable delay – 9 months and 11 months, respectively – before the parties cooperated. Additionally, during the COVID-19 pandemic, the CCI's orders, like those in the Industrial and Automotive Bearings Case<sup>4</sup> and the Brake Blocks Case, resulted in no penalties, showing the CCI's intention to quickly conclude investigations.

## VII. Case Studies

This section discusses four cases in which the leniency programme played a central role in uncovering and addressing cartel activities, and helps understand the operation of the leniency programme in real-world scenarios.

### 1. Case 1: Bid Rigging in Indian Railways's Tenders<sup>5</sup>

The “In Re: Cartelization in respect of tenders floated by Indian Railways for supply of Brushless DC Fans and other electrical items” has a few interesting aspects. It was the **first leniency decision of the CCI** and involved bid rigging for tenders floated by the Indian Railways for brushless DC fans. The case began when the CCI noticed these bid-rigging. M/s. Pyramid Electronics, one of the colluding firms, disclosed the inner workings of the cartel and confirmed its existence, and came forward to the CCI.

Through investigation backed by the DG, it came to light that **communications of key personnel during and after the bidding process indicated cartel operations**. The firms also exchanged **quotations for future tenders**, and this confirmed the existence of the cartel. When Pyramid Electronics applied for leniency during the DG investigation, its disclosures were found to be valuable, however, the CCI already had sufficient information to form a prima facie opinion and start the investigation, so Pyramid did not get complete immunity. Instead, its penalty was reduced by 75%.

According to the final order in 2017, M/s. Pyramid Electronics, M/s. R. Kanwar Electricals, and M/s. Western Electric Trading Company were penalised and the penalties were extended to the office-bearers of these firms. This case highlights the cautious approach adopted by the

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<sup>1</sup> Suo Motu Case No. 02 of 2016. In Re: Cartelisation in respect of zinc carbon dry cell batteries market in India

<sup>2</sup> Suo Moto Case No. 03 of 2014. In Re: Cartelization in respect of tenders floated by Indian Railways for supply of Brushless DC Fans and other electrical items.

<sup>3</sup> Case No. 50 of 2015. In re: Nagrik Chetna Manch, Through its President Maj. Gen. S.C.N. Jatar (Retd.)

<sup>4</sup> Suo Motu Case No. 07 (02) of 2014. In Re: Cartelisation in the supply of Bearings (Automotive and Industrial)

<sup>5</sup> Suo Moto Case No. 03 of 2014. In Re: Cartelization in respect of tenders floated by Indian Railways for supply of Brushless DC Fans and other electrical items.

CCI, where information is evaluated on the basis of the value it adds, and shows that the leniency programme encourages disclosing critical information even if full immunity is not granted.

## 2. Case 2: Zinc Carbon Dry Cell Batteries Cartel<sup>6</sup>

This case started when Panasonic Energy India Co Ltd (Panasonic) filed a leniency application regarding a cartel consisting of Panasonic, Eveready Industries India Ltd, and Indo National Ltd (Nippo), wherein the companies were avoiding a price war by keeping their prices high and stable.

The DG conducted search and seizure operations in the premises of Panasonic, Eveready and Nippo, and evidence supporting collusion was uncovered, including **fax and email communications and vital documents**. Panasonic received a 100% penalty reduction since they helped the CCI form a prima facie opinion regarding the existence of the cartel. Later, Eveready and Nippo applied for leniency and received penalty reductions of 30% and 20%, respectively.

Afterwards, Panasonic Corporation filed another leniency application, disclosing price-fixing between Geep Industries (India) Pvt Ltd (Geep) and Godrej and Boyce Manufacturing Co Ltd (Godrej). Panasonic showed that the battery prices of these companies were dependent on cartel decisions. These disclosures helped the CCI initiate a DG investigation against this secondary cartel of Geep and Godrej, and hence Panasonic again received a 100% penalty reduction.

## 3. Case 3: Nagrik Chetna Manch v. Fortified Security Solutions<sup>7</sup>

In this case, six bidding parties were caught **manipulating the bidding process**, and a few pairs were not even active market players in the industry. This shows the extent of the manipulation that went under in this case. All six parties applied for leniency, however only for of them were granted leniency by the CCI. The first applicant received a 50% penalty reduction since they came forward after the investigation had started, and the other three parties also received some degree of reduction in penalty.

This case also shows similar bid-rigging in the case of the tenders of Pune Municipal Corporation, which points towards a broader tender manipulation scheme. This case shows that to receive substantial reductions in penalty, leniency applicants have to provide timely and valuable information.

## 4. Case 4: Broadcasting Service Providers' Cartel<sup>8</sup>

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<sup>6</sup> Suo Motu Case No. 02 of 2016. In Re: Cartelisation in respect of zinc carbon dry cell batteries market in India

<sup>7</sup> Case No. 50 of 2015. In re: Nagrik Chetna Manch, Through its President Maj. Gen. S.C.N. Jatar (Retd.)

<sup>8</sup> Suo Motu Case No. 02 of 2013 In Re: Cartelisation by broadcasting service providers by rigging the bids submitted in response to the tenders floated by Sports Broadcasters.

Globecast India Pvt Ltd and Globecast Asia Pvt Ltd (Globecast) gave disclosure about **bid-rigging in tenders of broadcasting services**. They admitted to colluding with Essel Shyam Communication Limited (ESCL). The disclosures provided by Globecast were critical, and the CCI formed a prima facie opinion on the basis of these and started a DG investigation. During the investigation, ESCL also applied for leniency and revealed a strategic investment plan that has not been disclosed by Globecast.

Thus, Globecast received a 100% penalty reduction since its initial disclosure was vital in establishing the existence of the cartel, and ESCL received a 30% reduction in penalty. This case shows that the party which discloses early receives greater benefit, and highlights the importance of timeliness in leniency applications.

The above four cases showcase the importance of the leniency programme of the CCI, and demonstrate how enforcement actions are strengthened by timely and valuable disclosures.

## VIII. Antitrust Legislation Around the Globe

Antitrust laws and leniency programmes are imperative to maintain healthy market competition by preventing anti-competitive practices. Analysing the approaches of various countries would help in understanding the global antitrust enforcement landscape and in grasping the efficacy of various leniency programmes in promoting fair competition.

The antitrust framework of the European Union is governed through the **Treaty on the Functioning of the European Union (TEFU)**, with the Director-General for Competition as its primary enforcement body. Anticompetitive agreements and abuse of dominant positions is prohibited under Articles 101 and 102. EU's leniency programme was first introduced in 1996 and has been revised since then. It offers reductions in fines to companies which self-report about their involvement in a cartel or provide evidence against other cartel members. The first company to provide sufficient information is given full immunity, and cooperators who come forward after that are given reductions on the basis of the value of their contributions. The European Commission has been able to investigate and prosecute several high-profile cases thanks to their leniency programme.

The antitrust framework of the United States falls under the **Sherman Act, Clayton Act and Federal Trade Commission Act**, with the Department of Justice (DOJ) and Federal Trade Commission (FTC) as its enforcement bodies. DOJ's Corporate Leniency Policies was established in 1993 and gives full immunity from prosecution to the first company to report cartel involvement if it cooperates fully. The leniency programme has encouraged corporations to come forward voluntarily, which has led to imposition of substantial penalties on non-cooperating cartel members and has helped in speedy financial recoveries for the consumers affected.

In Japan, antitrust laws are enforced by the **Fair Trade Commission (JFTC)**, which focuses on prevention of bid-rigging and price-fixing by cartels. The leniency programme of the JFTC gives full immunity to the first applicant and reduces penalties for subsequent applicants who provide valuable

information. This programme serves as a model for other jurisdictions who wish to enhance their antitrust enforcement programmes, due to its transparency and predictability.

Antitrust laws and the leniency programme in Australia are enforced by the Australian Competition and Consumer Commission (ACCC), under the **Competition and Consumer Act, 2010**. It mirrors the successful elements of the antitrust framework of the EU and the US. The first party to report about a cartel and fully cooperate with the investigation is given immunity from civil and criminal proceedings, and subsequent parties who cooperate are given lesser reductions, under the Immunity Policy for Cartel Conduct of the ACCC.

An important factor which leads to the success of leniency programmes is that they give **strong incentives to cartel members** to come forward, since they have more motivation to report to authorities if they are ensured of full immunity or reduced penalties upon disclosing illegal activities.

The legal framework is key in ensuring the effectiveness of leniency programmes; to be successful, the rules of leniency programmes should be clear and fair. Transparency makes potential participants aware of what to expect in the future, and allows companies to trust the system and show active participation.

Active law enforcement of antitrust authorities also plays a crucial role. A sense of urgency grips members of cartels when authorities are proactive in investigation and prosecution of cartels, and instills in cartel members a fear of getting caught and bearing severe penalties if they do not come forward fast.

International cooperation among antitrust authorities of different countries further increases effectiveness. It is essential for countries to work together, since cartels often operate across borders. It becomes a difficult task for cartels to hide their activities when authorities share information with one another and collaborate in investigations. Such international cooperation ensures that tackling cartels on a global scale with successful prosecution becomes more likely.

## **IX. Challenges Facing India's Antitrust Legislation**

A few challenges impact the effectiveness of India's antitrust legislation and The CCI's leniency programme.

The **lack of awareness and understanding about competition law among businesses and the general public** is a major challenge. Many firms, especially Small and Medium Enterprises (SMEs), are unable to fully grasp the risks posed by involvement in cartel activities and the benefits of compliance with competition law, which leads to greater hesitancy on their part in cooperating with the leniency programme. While the CCI is advocating and conducting outreach programs to tackle this issue, wider acceptance and understanding can only be achieved by greater efforts.

Often, **SMEs lack the resources and expertise to thoroughly understand the implications of violating antitrust laws**. They are vulnerable since they often do not have the budget to hire

dedicated legal teams or external legal advice to warn them about unintentional breaches. A cultural element also comes into play - the mindset that business practices such as price-fixing and market allocation are necessary tactics for survival in a competitive market, which prevents firms from seeing these as what they truly mean for them - immediate harm. To change this mindset, the CCI would have to relentlessly emphasise and reiterate the risks of anticompetitive practices and long-term benefits of fair competition, through fair and clear communication.

The leniency programme of India, the design of which is based on successful international models, faces unique challenges too. This programme incentivises members of cartels to come forward with information, cooperate with the CCI, and benefit from reduced penalties. However, **transparency and predictability in the leniency process** present concerns, since the extent of leniency they would be granted is not clear to business, which can add to their hesitation in coming forward.

Another problem is **procedural delays in the enforcement of antitrust laws by the CCI**. Whenever the CCI takes a decision, it often has to go through phases of lengthy appeals and judicial reviews, which leads to delays in the resolution of cases, which then weaken the impact of imposed penalties and reduce the overall effectiveness of antitrust enforcement. Legal delays not only cause frustration to the involved parties, but also signal to the broader market that enforcement is sluggish, which causes potential violators to estimate that they can continue their antitrust operations for years before they are met with any real consequences.

The CCI also has to deal with **resource constraints**, which hamper its ability to effectively investigate, and prosecute in, cartelisation cases. Due to resource constraints, the CCI sometimes has to prioritise certain cases, which undermines overall market confidence in the antitrust regulatory framework.

## **X. Recommendations**

### **1. Strengthening whistleblower protection and confidentiality:**

- i. Introducing strong legal protections for whistleblowers, to prevent retaliation from employers or other cartel members. This could include legal provisions for anonymous reporting and strict penalties for breaches of confidentiality.
- ii. Establishing a support programme that offers legal assistance, psychological counselling, and financial support to whistleblowers, encouraging them to come forward without fear.

### **2. Increasing clarity and consistency in Leniency applications:**

- i. The Competition Commission of India (CCI) should regularly publish anonymised case studies and detailed guidelines that clearly outline the process, benefits, and protections associated with leniency applications. This will provide potential applicants with a clearer understanding of what to expect.

- ii. Standardised procedures for handling leniency applications should be in place, to ensure consistency in decision-making, reducing the perception of arbitrariness.
3. Reforming legal processes to address procedural delays:
- i. Implementing stricter timelines for the adjudication of competition cases, including appeals and reviews, to expedite the resolution process. Fast-track courts or specialised benches within existing judicial bodies to handle competition cases would be an important step.
  - ii. Establishing a dedicated enforcement mechanism to ensure that penalties imposed by the CCI are promptly enforced, reinforcing the deterrent effect of the CCI's actions.
4. Bolstering CCI's resources and capabilities:
- i. Increased government funding to expand the CCI's staff, particularly in technical and investigative roles, would enable the Commission to undertake more comprehensive and complex investigations.
  - ii. Partnerships with international competition authorities to share resources, expertise, and best practices, particularly in areas such as digital markets and global cartels, would prove extremely beneficial.
  - iii. Investing in advanced data analytics and artificial intelligence tools would enhance the CCI's ability to monitor markets and detect anti-competitive behaviour proactively.
5. Promoting awareness and education on the Leniency Programme:
- i. Regular outreach programs, workshops, and seminars targeted at businesses, legal professionals, and industry associations to raise awareness about the leniency programme and its benefits, should be conducted.
  - ii. The application process for Leniency should be simplified by providing clear, step-by-step instructions and creating an accessible online portal for submissions.
6. Increasing penalties for non-cooperation:
- i. Higher penalties should be introduced for cartels that are detected without having applied for leniency. This would serve as a strong deterrent against choosing not to cooperate with the CCI.
  - ii. Publicising the penalties imposed on non-cooperative cartels would serve as a warning to others about the consequences of not participating in the leniency program.

## **XI. Conclusion**

While examining the success of the leniency provisions of the CCI, we note that theoretically, these

measures play a vital role in detecting and dismantling cartels. However, these leniency programmes, which take advantage of the inherent instability present in cartels and encourage cartel members to hand-over in exchange for reduced penalties, have not had a very significant impact till now.

This is not to say that the leniency programme has been completely ineffective - the case studies outlined in this paper serve as examples to highlight the success of leniency provisions, and illustrate that the incentives can and do prompt cartel members to give early disclosures and cooperate with the CCI.

However, some challenges still persist, such as procedural delays, resource constraints, and the lack of transparency and predictability in the leniency process. A part of the reason India's leniency programme has not been successful in comparison to those of the USA and Australia is that the CCI has been given extensive discretionary power, especially in the matter of determining the amount of penalty to be imposed.

To strengthen its leniency provisions, the CCI should continually incorporate new techniques and methods; such as, the amendments in the Lesser Penalty Regulations to promote leniency provisions was a positive step. To strengthen India's antitrust enforcement, the leniency programme still needs refinement. Adapting and improving its measures would increase the CCI's momentum in promoting fair competition and protecting the interests of consumers.

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