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Evaluating the Effectiveness of the Competition Act, 2002 in Detecting and Penalizing Cartel Behaviour in India

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***Abstract*: Cartels fix prices, rig bids, and divide markets. Detected cartels raise prices by double-digit percentages across jurisdictions. The harm is not abstract: deadweight loss, misallocated resources, and fiscal losses in public procurement that disproportionately burden developing economies. This dissertation undertakes a systematic comparative evaluation of cartel enforcement in India, the EU, and the US. The Competition (Amendment) Act, 2023 introduced global turnover penalties, a leniency-plus framework, and expanded hub-and-spoke liability. Yet horizontal cartels were excluded from the settlement procedure. Does this produce stronger deterrence or merely statutory complexity? That is the central question. India is the world's fifth-largest economy. The Competition Commission of India remains a young institution operating without criminal sanctions. Empirical data: of approximately Rs 20,350 crore in penalties imposed as of April 2025, Rs 18,512 crore stayed or dismissed on appeal. A penalty never collected does not deter. The analysis anchors on optimal deterrence theory. Expected cost must exceed expected benefit. The calculus is equally sensitive to detection probability and sanction magnitude. Leniency programmes interact in complex ways. Sanctions must strip total cartel profit discounted for detection. The research employs functional comparative methodology across three models: India (developing-economy administrative regime), the EU (civil-penalty administrative regime with private enforcement growing), and the US (criminalised model with imprisonment and treble damages). The penalty recovery crisis is the most urgent problem. The leniency framework has not generated self-reporting. Without credible ex officio detection or individual criminal liability, India's leniency programme asks corporate actors to take significant risks for uncertain rewards. The exclusion of horizontal cartels from settlement contradicts Parliament's own Standing Committee recommendation. The global turnover penalty, without binding proportionality safeguards, creates constitutional vulnerability. NCLAT's full merits review and easy appellate stays make enforcement finality structurally elusive. The dissertation formulates reform recommendations: extend settlement to cartels, establish an anonymous whistleblower tool, mandate proportionality in penalty guidelines, individual civil penalties and director disqualification, reform appellate review, invest in dawn raids and digital forensics, and develop private enforcement infrastructure. An effective competition regime is not a luxury. It is a precondition for India's consumer oriented market economy. The law exists. The institutional foundation exists. What is needed now is the will to close the gap between statutory ambition and enforcement reality.**

***Keywords*: Appreciable Adverse Effect on Competition, Directorate-General for Competition (European Commission), Monopolies and Restrictive Trade Practices Act, 1969 (India), Competition Commission of India.**

1. Introduction

A. Why Hard-Core Cartels Matter

Price-fixing, bid-rigging, market allocation — these are not technical regulatory violations. They are economic crimes that take money out of pockets. Research across multiple jurisdictions has consistently shown that cartels, when eventually detected, had been inflating prices by double-digit percentages for years, sometimes decades. The harm is real and measurable: buyers overpay, resources flow to the wrong places, and the competitive process that is supposed to drive efficiency simply stops working.[1] The public procurement dimension makes this worse, not just different. When cartels operate in infrastructure contracts, essential commodity supply chains, or government tenders, the overcharge hits the public exchequer directly. Taxpayers fund the overcharge. And the burden lands hardest on economies that can least afford it — developing nations with large informal sectors, limited fiscal headroom, and public goods that genuinely depend on competitive contract prices. 22 For this reason — and not merely as a matter of regulatory fashion — the competition authorities of the US, EU, and India have each placed hard-core cartel enforcement at the centre of their antitrust work. The approaches differ significantly. Under the Sherman Act 1890, price-fixing is a criminal felony in the United States. Companies face fines that routinely exceed $100 million; executives personally face up to ten years in prison.[1]

B. The MRTP Act to the Competition Act 2002: A Historical Transition

India's MRTP Act 1969 was not a competition statute. It was

[1] Monopolies and Restrictive Trade Practices Act 1969, ss 2, 10, 33, 37; Bhattacharjea (n 1) 61314.

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a control statute—designed to prevent industrial concentration, not to protect competitive process. Its enforcement mechanisms were complaint-driven, slow, and formalistic. Secret horizontal coordination? The MRTP framework had no tools to detect it.[2]

The 1991 liberalisation didn't just change trade policy, it exposed how embarrassingly outdated the MRTP framework had become. Import barriers came down. Foreign capital started arriving. And the old statute, designed for an economy where the state micromanaged industrial concentration, had absolutely nothing to say about the sophisticated horizontal coordination that market liberalisation brings with it. The Raghavan Committee (1999–2000) drew the obvious conclusion: scrap MRTP entirely, build something closer to what the EU had. The Competition Act 2002 followed, though the CCI didn't become fully operational until 2009, seven years after the statute passed, which is worth pausing to note.

The change was not simply a matter of replacing one statute with another. Structurally, the whole approach shifted. Under the old framework, size was the problem — concentration itself was presumed harmful. The 2002 Act moved to effects-based assessment: does the conduct actually harm competition? Section 3(3) introduced a rebuttable presumption of AAEC for cartels, which dramatically reduced the evidentiary burden the CCI would need to carry in contested proceedings. The Director General received search-and-seizure powers. Section 46 created what would become the leniency mechanism — modest at first, underdeveloped, but the foundation of something that might, with better design, have worked.

The 2002 Act did not, however, arrive without baggage. Penalty calculation under Section 27 — ten percent of average turnover or three times profits, whichever is higher — produced enough ambiguity that courts interpreted it inconsistently for years. The leniency regulations were, frankly, half-finished. The DG's investigative capacity was constrained both by budget and by the simple fact that there wasn't much precedent to work from. Appeals went first to COMPAT, then to NCLAT — and both tribunals proved susceptible to delay, with NCLAT's full merits review standard making every major penalty order potentially a decade-long saga.

C. Section 3(3) Substantive Definition of Cartels

Start with the structure, because it matters. Section 3(1) prohibits agreements that cause or are likely to cause an appreciable adverse effect on competition. Section 3(2) makes such agreements void from the outset. But the provision that actually drives cartel enforcement is Section 3(3) — and what it does is deceptively simple: it creates a presumption that certain horizontal agreements, specifically those involving price-fixing, output limitation, market sharing, or bid-rigging, carry an AAEC. The respondent can rebut it, yes. But the burden has shifted.

This puts India somewhere between the EU's "restriction by object" category under Article 101(1) TFEU and the American per se rule, though closer to the former. The practical upshot is significant: once the CCI has established that a qualifying horizontal agreement existed, it doesn't need to define the relevant market, demonstrate that the parties held market power, or try to quantify what the cartel actually overcharged. The agreement itself, if it falls within Section 3(3), carries the presumption of harm.

What this means in practice is that the evidentiary fight in Indian cartel cases almost never happens at the AAEC stage. It happens earlier, and the question is simpler and harder at the same time: did an agreement exist at all? Cartels are not documented. Participants don't sign contracts saying they've agreed to fix prices. Direct evidence is rare without either a leniency applicant or a dawn raid to generate it. In Builders Association of India v Cement Manufacturers' Association, the CCI addressed this directly — it accepted that circumstantial evidence could be enough. Parallel price increases. Abnormal profit margins. Output restrictions coinciding across competitors. Trade association meetings where pricing happened to come up. The Commission adopted what is sometimes called a "plus factors" analysis: parallel conduct plus additional indicia of coordination is enough to raise the inference of a prohibited agreement.[3]

This is broadly consistent with European Commission methodology, and in principle it's the right approach — you can't expect direct evidence of something that by definition happens in secret. The problem, as academic commentary has consistently noted, is that the CCI has applied the plus factors framework inconsistently. What quantum of parallel conduct, combined with what additional factors, actually crosses the line into an inferable agreement? That threshold has never been precisely articulated. Which means that enforcement risk and legal uncertainty continue to shadow every investigation.[4]

D. The Competition (Amendment) Act 2023: A Paradigm Shift?

The 2023 Amendment is the most comprehensive revision to India's competition framework since the original statute. Its cartel provisions alone would justify a dissertation.

The single most consequential change is the redefinition of the penalty base. Before 2023, following the Supreme Court's ruling in Excel Crop Care, penalties were calculated on "relevant turnover" — meaning turnover from the specific products or services involved in the contravention. The Court's reasoning in that case was grounded in constitutional proportionality: applying a ten percent penalty on a diversified conglomerate's global revenue for a cartel affecting one product line wasn't just commercially punishing, it was disproportionate in a way that might violate Article 14. The legislature has now directly overridden that ruling. The penalty base is global total turnover derived from all products and services.[5]

The debate this has generated is, to put it mildly, fierce. Those in favour argue — not unreasonably — that global

[2] Monopolies and Restrictive Trade Practices Act 1969 (India); Competition Commission of India, *Provisions Relating to Cartel* (CCI 2022) https://cci.gov.in accessed 23 April 2026.

[3] Regulation 1/2003, art 20.

[4] Kumar (n 22) 98100; Bhattacharjea (n 16) 1819.

[5] Competition Act 2002, ss 19(1), 26(1), 27; Kumar (n 22) 10204.

turnover alignment with EU practice is necessary to create meaningful deterrence for multinational enterprises that would otherwise absorb product-specific fines as a routine cost of doing business. Critics point out something the proponents tend to gloss over: the EU's global turnover approach works because it's accompanied by structured fining guidelines that anchor the base calculation to the value of sales in the affected market. Proportionality is built into the methodology at the computational stage, before any fine is announced. India's shift imports the headline figure while leaving out the structural discipline that makes it constitutionally defensible.[6] The predictable result: every significant CCI cartel order will now face a constitutional challenge before the Supreme Court, adding years and uncertainty to a penalty collection process that was already failing badly.

The CCI (Determination of Monetary Penalty) Guidelines 2024 attempt to fill this gap. They incorporate affected sales value, gravity, duration, and both aggravating and mitigating factors.[7]Whether they will actually constrain CCI discretion in practice — as opposed to providing post-hoc rationalisation for decisions already made — is something no major cartel proceeding has yet tested.

E. The Relevant Turnover Controversy: Excel Crop Care and its Reversal

Excel Crop Care Ltd v CCI (2017) reshaped how penalties work.[8] The Supreme Court ruled that "turnover" means turnover from the specific goods or services involved in the violation—not a conglomerate's global revenue. The logic was straightforward: penalising a multinational's entire worldwide operations for a localised cartel is disproportionate, arbitrary, and arguably breaches Article 14.[9]

The 2023 Amendment overturned that. Turnover now means the entire global total from all products and services. For large conglomerates, exposure exploded. Whether courts will uphold this against constitutional challenge is an open question. The CCI's 2024 Guidelines attempt mitigation through adjusting factors, but proportionality concerns linger.[10]

F. The CCI: Institutional Architecture, Powers, and Functions

1) CCI as Regulator, Investigator, Adjudicator

The CCI does everything. It initiates inquiries, directs investigations, and decides outcomes—all within the same institution. There's an inherent tension. Once an agency begins investigating, the people running that investigation develop a view. By the time they reach the adjudication stage, pre-judgment is a real risk. The EU mitigates this through an independent Hearing Officer and a wall between DG COMP (who investigates) and the College (who decides). The US separates DOJ prosecutors from federal courts entirely. India's model keeps it all in one place, and courts have challenged this design repeatedly.[11]

G. The Director General: Investigative Powers and Practical Limitations

The DG can summon witnesses under oath, demand documents, and—with prior judicial approval—conduct searches and seizures.[12]

The search power is essential. Cartels operate in secret. Hard evidence doesn't surface through normal channels. Unannounced raids are the only reliable way to convert suspicion into provable fact. The EU conducts these without advance judicial approval.[13]

India requires a court order first, which creates delay and telegraphs intent. But the deeper problem is usage. The DG has rarely deployed search powers aggressively. Major cartel cases have relied on complaints, routine requests, or leniency applications instead. The consistent scholarly view is that this under-utilization cripples detection capacity.[14]

H. Investigative Process: From Prima Facie Inquiry to Section 27 Order

The CCI receives a complaint or information under section 19(1) or investigates suo motu. It conducts a prima facie assessment. If it forms a prima facie opinion that a contravention has occurred, it directs the DG to investigate under section 26(1). The DG submits a report. The CCI examines it, provides an opportunity to be heard, and issues a final order under section 27. In practice, this process has taken eighteen months to several years in complex cases, with further delays from appellate proceedings.[15]

I. Appellate Review and Structural Vulnerability

Appeals lie to the NCLAT under section 53B, and from there to the Supreme Court on substantial questions of law. The NCLAT conducts full merits review — examining factual findings and economic analysis — not the more deferential standard of judicial review. Every significant CCI cartel order is susceptible to re-litigation.[16]

The consequences for deterrence are severe. As of April 2025, out of total penalties imposed by the CCI amounting to approximately Rs 20,350 crore, approximately Rs 18,512 crore had been stayed or not realised as a result of appellate proceedings. A penalty realisation rate of less than ten per cent. Firms anticipating years of appellate proceedings and a high probability of penalty reduction can rationally discount the effective expected sanction to a fraction of the nominal amount.[17]

[6]Competition Act 2002, s 53B; 'Competition Litigation and Appeals Guide' (KSK Competition Law, 2025).

[7] Parliamentary Standing Committee on Finance, 53rd Report (PRS India, 2025) para 4.3.

[8] Excel Crop Care (n 10).

[9] ibid paras 4147; Bhattacharjea (n 16) 1416.

[10] Competition (Amendment) Act 2023, s 29; CCI (Determination of Monetary Penalty) Guidelines 2024; Rahul Kundnani, 'CCI's Power to Levy Penalties on Global Turnover Needs Balanced Approach' (AMS Shardul, 2024).

[11] Competition Act 2002, ss 79; 'Investigation of Cartels' (2019) NLS Business Law Review 46; Kumar (n 22) 9698.

[12] Competition Act 2002, ss 16, 36, 41.

[13] Regulation 1/2003, art 20.

[14] Kumar (n 22) 98100; Bhattacharjea (n 16) 1819.

[15] Competition Act 2002, ss 19(1), 26(1), 27; Kumar (n 22) 10204.

[16] Competition Act 2002, s 53B; 'Competition Litigation and Appeals Guide' (KSK Competition Law, 2025).

[17] Parliamentary Standing Committee on Finance, 53rd Report (PRS India, 2025) para 4.3.

J. The Leniency Framework: Section 46 and the Lesser Penalty Regulations

Section 46 empowers the CCI to impose a lesser penalty on an enterprise that makes full and true disclosure. The Lesser Penalty Regulations (2024) establish a tiered system: first applicant up to 100% reduction, second up to 50%, third up to 30%. The marker system allows applicants to secure their place in the queue while completing disclosure.[18]

The 2023 Amendment introduced 'leniency-plus': an enterprise already under investigation for one cartel that discloses a second, previously unknown cartel obtains priority status for the second and an additional 30% reduction for the first.[19]

But three structural features constrain effectiveness. The weaknesses constraining leniency effectiveness run deeper than mere design inadequacy**.** Start with the most fundamental: the absence of criminal sanctions for individuals. In the US, a cartel executive faces up to ten years' imprisonment. That is not a trivial matter. A corporate fine can be absorbed, negotiated, insured. Prison time cannot. The DOJ understood this instinctively — the combination of corporate leniency with individual criminal exposure creates what practitioners call a "race to the courthouse." In India, there is no race. The incentive structure reduces to avoidance of a civil penalty, which even an underfunded corporate compliance programme can absorb or litigate for years. It is simply not the same order of deterrence.[20]

A second constraint, more insidious, operates globally. Exposure to follow-on civil damages claims has systematically depressed leniency applications worldwide. The OECD documented a 58% decline between 2015 and 2021.[21]Why? Because the first firm to self-report, though it secures immunity from administrative penalties, does not escape civil liability. It becomes the documentary evidence against which damages claims are proved. In the EU, the Damages Directive created a framework explicitly protecting leniency materials from damages discovery — but only partially. India's protections remain less developed, further diminishing the relative appeal of cooperation.[22]"

The third constraint is peculiarly Indian: the gap between nominal penalties and actual collection. This is not separate from leniency; it is the mechanism through which leniency itself becomes irrational. Weak enforcement reduces the attractiveness of leniency, which in turn reduces detection, which further weakens enforcement. A feedback loop. An enterprise considering whether to self-disclose must ask: what is the expected benefit of cooperation if the penalty itself will likely be stayed for years and then reduced? The answer, rationally calculated, is often that cooperation offers marginal advantage over simply litigating.

The 2023 amendments introduced settlement and commitment procedures, drawing explicitly on the EU's cartel settlement mechanism, which has been deployed in major cases — the Trucks cartel, the Euribor derivatives cartel.[23] The theory is straightforward: allow parties to admit liability in exchange for a modest penalty reduction, conserve investigative resources, and secure binding admissions that facilitate follow-on damages claims. The EU's experience vindicates this approach.

But here is the critical flaw: the Indian statute explicitly excludes horizontal cartels from settlement. Section 48B provides no settlement mechanism for contraventions of Section 3(3) — price-fixing, bid-rigging, the categories of conduct demanding the most urgent resolution.[24] This is puzzling. The Parliamentary Standing Committee on Finance explicitly recommended including cartels, arguing that rapid settlement would conserve CCI resources and reduce the appellate backlog that currently paralyzes enforcement. Parliament rejected the recommendation. The government's stated concern — that settlement would signal undue leniency toward egregious conduct — appears to have taken priority over institutional efficiency and deterrence optimization. The consequence is precisely what should not happen: the CCI is deprived of the procedural tool most effective at reducing investigation timelines and enforcement costs, deployed at the precise point where it is most needed.[36]

The statutory framework is formally sophisticated. The AAEC presumption shifts evidentiary burden efficiently. The dual-track penalty structure — ten percent of turnover or three times profit — aligns penalties with economic benefit. Leniency-plus introduces an innovative detection mechanism. Hub-and-spoke coverage modernizes liability theory. The shift to global turnover increases nominal deterrent exposure. Individually, these are defensible design choices.

Yet the architecture fails. Four structural weaknesses persist. First, the absence of individual criminal liability removes the single most powerful personal deterrent available to any competition regime. Second, the legislative exclusion of cartels from settlement procedures forecloses rapid case resolution, perpetuating the appellate delays that have become endemic to Indian enforcement. Third — and this requires emphasis — the phenomenally low collection rate on imposed penalties means the effective sanction bears almost no relationship to the nominal penalty. Fourth, the CCI's investigative capacity, particularly regarding digital evidence and proactive market screening, lags substantially behind the Commission or the DOJ. None of these defects flows from lack of statutory ambition. All four flow from implementation failures and design choices that could, in principle, be corrected.

Third, under-utilisation of dawn raids and limited digital forensics capacity constrain proactive detection. Fourth, the

[18] Competition Act 2002, s 46; CCI (Lesser Penalty) Regulations 2024, regs 37.

[19] Competition (Amendment) Act 2023, s 46A.

[20] 'Deterrence and Detection' (n 21); Athul Ramaswami, 'Cartel Prosecution in India' (2023) IJLLR.

[21] OECD, 'The Future of Leniency Programmes' DAF/COMP/WP3(2023)1, 79; Directive 2014/104/EU.

[22] Bhattacharjea (n 16) 2123; 'Cartel Penalties in India' (2024) 9(2) ICLR 810.

[23] Competition (Amendment) Act 2023, ss 48B, 48C; Commission Regulation 622/2008; European Commission Press Release IP-16-2582 (19 July 2016); IP-13-1208 (4 December 2013).

[24] Parliamentary Standing Committee on Finance, 52nd Report (2022) paras 5.75.11; Competition (Amendment) Act 2023, s 48B(1) proviso.

catastrophic gap between penalties imposed and penalties collected — the mandatory pre-deposit requirement has only partially addressed this — means formal stringency is consistently undermined by enforcement realities. These structural gaps form the analytical backdrop for the following chapter's examination of India's actual enforcement record.

K. Penality Regimes

Section 27 of the Competition Act sets penalties at up to 10% of average turnover or three times profit, whichever is higher.[25]The 2023 Amendment changed something fundamental. It redefined "turnover" as global total turnover across all products and services. This overruled the Supreme Court's "relevant turnover" standard from Excel Crop Care. [26]

What does this mean practically? A 10% penalty on global turnover for a diversified multinational where only one division engaged in a localised Indian cartel could be enormously disproportionate to the actual harm caused. This has attracted sharp academic criticism on proportionality grounds under Articles 14 and 21. [27]

But here is the deeper problem. As of April 2025, of total penalties imposed amounting to approximately Rs 20,350 crore, Rs 18,512 crore—roughly 91%—had been stayed or dismissed by the NCLAT or the Supreme Court.[28] That is not a marginal efficiency loss. That is structural enforcement failure. A penalty systematically stayed and eventually reduced or set aside provides zero deterrence. None. The CCI's 2024 Monetary Penalty Guidelines attempted to introduce structured methodology. Whether appellate bodies will treat them as sufficient for proportionality review remains genuinely unclear.

The EU penalty regime under Article 23(2) of Regulation 1/2003 imposes a maximum of 10% of aggregate worldwide group turnover. But—and this matters—the 2006 Fining Guidelines anchor the basic calculation to the value of sales affected by the infringement in the relevant geographic market. That figure is then multiplied by a gravity percentage and adjusted for duration. A separate "entry fee" of 15–25% of relevant sales applies to hard-core cartels irrespective of duration. Proportionality is embedded structurally. The 10% cap prevents confiscatory outcomes. Between 2012 and 2021, the Commission imposed aggregate cartel fines exceeding €30 billion with collection rates substantially higher than India's.[29]

US penalties are criminal. Under Section 1 of the Sherman Act, corporations face fines up to $100 million or twice the gross gain from the offence, whichever is larger. Individuals face fines up to $1 million and imprisonment up to ten years. Clayton Act civil liability adds treble damages and attorneys' fees. Deterrence here does not rest on fine magnitude alone. It rests on combination: financial penalties plus personal imprisonment plus private damages multiplied by three. An executive facing personal prison time bears a cost that no insurance policy, no corporate indemnification, no compliance programme can offset. That is the structural distinction. It is why the US model works.

India's statutory penalty caps are not, on their face, obviously lower than the EU's. The decisive differences lie elsewhere. Penalty realisation rates. Structured methodologies that maintain proportionality while preserving deterrence. And—this is fundamental—the absence of non-indemnifiable criminal sanctions against individuals.

2. Findings and Discussion

A. The Leniency Framework has not Generated a Self-Reporting Culture

Section 46 of the Competition Act, read with the 2024 Lesser Penalty Regulations, offers up to 100% reduction for the first qualifying applicant. The 2023 Amendment added Leniency Plus: an applicant already under investigation for one cartel gets priority status and an additional 30% reduction for disclosing a second cartel.[30]

The theoretical architecture is sound. The empirical outcome is not.

Leniency applications to the CCI remain strikingly low. A study covering 2009 to 2021 found no evidence of a "race to the agency." The battery cartel case Panasonic (100% reduction), Eveready (30%), Nippo (20%) remains an exception, not the rule.[31]

Compare the EU: approximately 60% of detected cartels originate from leniency applications.[32] The US DOJ's Corporate Leniency Policy, especially after its 1993 revision, is credited with generating most major international cartel prosecutions. Empirical modelling suggests it reduced cartel formation by roughly 59% and increased detection by roughly 62%.[33]

B. Why has India not Achieved Similar Results? Three Interlocking Causes

First, uncertainty. Penalty calculation is unpredictable. Cartel members considering self-disclosure cannot reliably estimate what penalty they will face even after cooperating.

[25] Nathan H Miller, 'Strategic Leniency and Cartel Enforcement' (2009) 99 American Economic Review 750.
[26] Competition Act 2002, s 27.
[27] Excel Crop Care Ltd v Competition Commission of India (2017) 8 SCC 47.
[28] 'A Critique of the Shift from Relevant to Global Turnover' (2024) Indian Competition Law Review.
[29] Regulation 1/2003 (n 6) art 23(2).
[30] Competition Commission of India (Lesser Penalty) Regulations 2024, Regulation 5; Wolters Kluwer, 'Main Developments in Competition Law and Policy 2025 India' (2025) https://legalblogs.wolterskluwer.com/competition-blog/main-developments-in-competition-law-and-policy-2025-india/
[31] 'Cartel Leniency Programme in India Why No Race Here?' (2022) R Discovery https://discovery.researcher.life/article/cartel-leniency-programme-in-india-why-no-race-here/fe471eea4b39356db493026e7543a2ff; Press Information Bureau, 'CCI issues important order under Lesser Penalty Provisions in the cartel case by leading Indian Zinc-Carbon Dry Cell Battery Manufacturers' (PIB, 2020) https://pib.gov.in/Pressreleaseshare.aspx?PRID=1529673.
[32] European Commission, 'Leniency Competition Policy' (2024) https://competition-policy.ec.europa.eu/antitrust-and-cartels/leniency_en
[33] Nathan H Miller, 'Strategic Leniency and Cartel Enforcement' (2009) 99(3) American Economic Review 750.

That weakens the incentive to cooperate.[34]

Second, no criminal liability. In the US, individual executives face imprisonment. The existential threat concentrates the mind in ways a corporate administrative fine cannot. India has no equivalent pressure.[35]

Third, there's the low penalty recovery issue. Non-cooperating firms can drag CCI orders through litigation for years and routinely secure reductions. That undermines any incentive an enterprise might otherwise feel to self-report early.

Leniency Plus introduces a complication—one that game theory flags as genuinely concerning. Depending on how you calibrate it, leniency-plus can actually stabilise certain cartels instead of destabilising them. The mechanism is perverse: firms disclose smaller, less profitable cartels to reduce exposure on the larger, more lucrative ones.[36] The CCI's 2024 regulations don't appear to have thought this through fully. This is not abstract theory. It is a live risk in the enforcement toolkit.

C. Excluding Horizontal Cartels from Settlement is a Policy Error

The 2023 Amendment introduced settlement and commitment mechanisms through Sections 48B and 48C. But there is a glaring asymmetry. Settlement works for vertical restraints and abuse of dominance. Horizontal cartels? Excluded entirely. The Parliamentary Standing Committee on Finance had, in fact, specifically recommended extending this tool to cartels. Parliament ignored that recommendation and refused.[37]

What does comparative evidence show? The EU's Cartel Settlement Notice is a documented success. Consider the Euribor cartel, or the Trucks cartel—both resolved through settlement procedures. Firms that participated received a 10% fine reduction in exchange for binding admissions. What the Commission achieved in those cases: binding factual records, conserved investigative resources, decisions enforceable in follow-on civil claims, all accomplished faster than contested proceedings would have allowed.[38] The US operates through a different mechanism—plea bargaining in criminal cartel cases—but the functional outcome is similar: rapid resolution, cascading cooperation, DOJ resources concentrated on the highest-value investigations.

India's position is different. By refusing to allow settlements in cartel cases, the regime guarantees that every contested cartel will go through full administrative adjudication. Evidence weight becomes irrelevant. Party willingness to admit liability becomes irrelevant. The process is inflexible by design. And this inflexibility feeds directly into the appellate backlog—arguably the single most damaging structural weakness of the entire Indian regime. When settlement is not available, what is the rational corporate strategy? Aggressive litigation at every stage, including appellate stays. There is no procedural off-ramp. There is no incentive to cooperate early.

The underlying policy concern is understandable enough: the worry that quiet settlements might undermine public deterrence messaging. But the EU experience undermines this objection. Settlement decisions do not happen in shadows. They include public admissions of liability, published statements of the infringement, and deterrence-calibrated fines that remain substantial. The 10% reduction is modest—not transformative. What settlement actually provides is procedural efficiency and factual admissions that can be leveraged in private damages litigation. India abandons all of these benefits by maintaining the exclusion.

3. Conclusion and Recommendations

India's Competition Act 2002, as amended in 2023, represents a genuine institutional commitment. The statute is sound. The reforms address real identified weaknesses. But statutory sophistication and enforcement reality remain fundamentally misaligned. A regime that imposes penalties it cannot recover, leniency it cannot incentivise, and adjudication it cannot finalise is, in practical terms, a regime that does not deter.

The problem is not legislative intent. It is architectural failure. Cartels in India remain under-detected. Penalties, when imposed, face near-automatic appellate reduction. The expected cost of collusion—properly discounted for detection risk and appellate probability—often falls below expected gain. That is the precise condition Becker identified as the foundation for rational offending. India has not yet reversed it.

The reforms here are not radical rethinks. They are calibrated corrections to identifiable design flaws. Settlement for cartels. Whistleblower protection. Binding penalty methodology. Individual liability. Appellate restraint. Each addresses a specific failure point. Together, they would move India substantially closer to enforcement effectiveness. Not toward creating a flawless system—no regime is. But toward one where the gap between promise and practice narrows to something that resembles competent enforcement.

India is the world's fifth-largest economy. Its markets matter globally. Its consumers bear the costs of cartel overcharges—costs that are economically significant, even if difficult to quantify precisely. An effective competition regime is not a luxury for rich countries. It is foundational to the competitive, consumer-driven market economy India's development requires. The law exists. The institutional base exists. The reforms are identifiable and implementable. What remains is the political will to make both function.

The law exists. The institutional foundation exists. What is

[34] Bhattacharjea (n 5); 'Measuring the Efficacy of Leniency Programme in India: A Comparative Analysis' (2023) 6(2) IJLR https://ijlr.iledu.in/measuring-the-efficacy-of-leniency-programme-in-india-a-comparative-analysis/.

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[38] European Commission, Press Release IP-13-1208, 'Antitrust: Commission fines banks €1.49 billion for participating in cartels in the interest rate derivatives industry' (Brussels, 4 December 2013); European Commission, Press Release IP-16-2582 (n 3).

needed now is the political and administrative will to make both work.

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