
CARTEL PROSECUTION IN INDIA: THE ROLE OF LENIENCY PROGRAMS SHAPING THE JUDICIARY AND COMPETITION COMMISSION OF INDIA'S RULINGS

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ABSTRACT

Cartels represent one of the most harmful forms of anti-competitive conduct, undermining market fairness by fixing prices, limiting production, and manipulating tenders. Their inherently secretive nature makes them difficult to detect, leading many jurisdictions to adopt leniency programs that incentivize cartel members to disclose information in exchange for reduced penalties. In India, this framework is provided under Section 46 of the Competition Act, 2002² and the CCI (Lesser Penalty) Regulations, 2009³. While these measures align India with global best practices, their real-world effectiveness in exposing cartels and shaping judicial outcomes remains debated. This research aims to critically evaluate the role of leniency in Indian cartel enforcement, focusing on the Competition Commission of India's application of the program and its review by appellate bodies. The objectives are to analyze the statutory framework, examine its application in landmark cases, assess judicial interpretations, and determine its deterrent value. Research gaps persist in understanding the consistency of CCI's approach, the evidentiary treatment of leniency applications, and whether leniency sufficiently deters collusion. Using a doctrinal and analytical methodology, supported by case studies and comparative insights from the US and EU, this study offers a comprehensive assessment of the working of CCI, judiciary and policy recommendations to strengthen India's leniency regime.

Keywords: Leniency, Cartel, Competition Commission of India, National Company Law Appellate Tribunal, Section 46 of the Competition Act, 2002

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² Competition Act, No. 12 of 2002, § 46 (India).

³ Competition Comm'n of India (Lesser Penalty) Regulations, 2009, Gazette of India, Extraordinary, Pt. III, § 4 (Aug. 13, 2009) (India).

Introduction to Leniency in Cartels in India:

Cartels are widely seen as the most harmful type of anti-competitive behavior. Cartelization in India is a civil offence prohibited under Section 3 of the Competition Act, 2002, which renders agreements between competitors that fix prices, limit production, or restrict services void. Such agreements are deemed to have an appreciable adverse effect on competition and are strictly illegal⁴. The cartels go against the basic principles of free markets by fixing prices, limiting production, dividing markets, or manipulating bids. This directly harms consumers through higher prices, fewer choices, and reduced innovation. Their secretive nature makes the issue worse. Collusive agreements are usually informal, spoken, and hard to detect, making it difficult for regulators to find and prosecute them using standard investigative methods. There are a few noteworthy characteristics of the penalty provisions for cartels⁵. Most jurisdictions calculate cartel fines based on the relevant turnover of the product or service involved. Brazil is an exception; it allows total turnover if specific data is unavailable. In India, the CCI switched to a penalty system based on relevant turnover after the Supreme Court's 2017 Excel Crop Care⁶ judgment. Companies in cartels try to avoid leaving evidence and often make their coordinated actions look like independent business choices. This creates big obstacles for detection. In this situation, strong enforcement is crucial. It not only penalizes offenders but also discourages future anti-competitive agreements. Around the world, leniency programs have become essential for cartel enforcement. They directly deal with the secrecy that defines cartel behavior. The focus of current antitrust practice is deterring explicit cartel formation. Our results seem to give some weight to the concern that explicit cartel deterrence may not always feed back into low prices, the real goal of competition policy⁷. Leniency offers immunity or lower penalties to cartel members who voluntarily share information and assist with investigations. This weakens cartels from the inside and encourages betrayal among their members. This "race to the regulator"⁸ keeps cartel members constantly worried about being reported, making collusion unstable.

⁴ Competition Act, No. 12 of 2002, § 3 (India).

⁵ Aditya Bhattacharjea & Oindrila De, India's Cartel Penalty Practices, Optimal Restitution and Deterrence, Institute of Economic Growth Working Paper No. 424 (Mar. 28, 2021)

⁶ Excel Crop Care Ltd. v. Competition Commission of India, (2017) 8 S.C.C. 47 (India).

⁷ Maria Bigoni, Sven-Olof Fridolfsson, Chloé Le Coq & Giancarlo Spagnolo, Fines, Leniency, and Rewards in Antitrust, 43 RAND J. Econ. 368 (2012)

⁸ Peter Whelan, Reforming the European Commission's Enforcement of Cartel Law: The Case for Individual Administrative Sanctions, Antitrust Chronicle, Aug. 2022, at 37, <https://ssrn.com/abstract=4201443>.

The idea behind leniency is to turn secrecy into a weakness. When someone reveals inside information like records, communications, or testimony, competition authorities gain access to vital evidence that would otherwise be unreachable. This improves both detection and prosecution. In places like the United States, where the Department of Justice started leniency in the 1970s, and the European Union, which created a structured leniency program in the 1990s, this approach has shown remarkable success. Most major cartel cases like the *United States vs Norris*⁹ have been uncovered through voluntary disclosures rather than traditional investigative methods. A DOJ investigation is typically generated by either a private complaint, a revelation in the media, or by an informant seeking protection under the leniency program¹⁰. These regions show how leniency programs not only reveal hidden cartels but also create a strong deterrent by instilling fear of betrayal among cartel members. Recognizing this global trend, India incorporated leniency into its competition law through Section 46 of the Competition Act, 2002, and the Competition Commission of India (Lesser Penalty) Regulations, 2009. This move reflects India's commitment to match domestic enforcement with international best practices. In the last ten years, India has seen several major cartel cases that highlight how useful leniency can be, such as the cement in Builders Assn. of India v. Cement Mfrs.' Assn¹¹., the CCI fined 11 cement companies¹² and the association for forming a cartel. The total penalties exceeded INR 6,307 crore. On appeal, COMPAT confirmed the CCI's findings and ordered payment of 10% of the penalty. This decision strengthened efforts against price-fixing in the cement industry. For beer cartelisation¹³, the case where CCI offered a 100% penalty reduction to SAB, a 40% penalty reduction to UBL and 20% penalty reduction to CIPL was upheld. Lastly, In the Dry cell batteries cartels¹⁴, where voluntary disclosures helped the Competition Commission of India (CCI) gather crucial evidence and impose penalties.

However, India's experience has also revealed challenges related to the consistency and predictability of leniency results, the extent of confidentiality protections, and how courts view leniency disclosures as admissions. Despite these issues, the case for leniency in India remains

⁹ United States v. Norris, 722 F.Supp.2d 632 (E.D. Pa. 2010)

¹⁰ Albert Foer & Stratis G. Camatos, *Cartel Investigation in the U.S.A: A Primer*, Am. Antitrust Inst. Working Paper No. 07-05 (Mar. 13, 2007)

¹¹ Builders Ass'n of India v. Cement Mfrs.' Ass'n, 2012 CompLR 629 (CCI).

¹² ACC Limited, Ambuja Cements Limited, UltraTech Cements, Grasim Cements (now merged with UltraTech Cements), JK Cements, India Cements, Madras Cements, Century Cements, Binani Cements, Lafarge India and Jaypee Cements

¹³ Pawan Jagetia v. Competition Comm'n of India, Competition Appeal (AT) No. 16 of 2021 (NCLAT 2021).

¹⁴ In re Cartelisation in the Zinc Carbon Dry-Cell Batteries Mkt. in India, Suo Motu Case No. 2 of 2016 (CCI Apr. 19, 2018)

strong. It tackles the natural difficulty of detecting cartels, makes enforcement more efficient by cutting investigative costs, encourages instability in cartels, and strengthens deterrence by making collusion a high-risk practice. More importantly, leniency programs promote fairness in the market by ensuring that anti-competitive actions are exposed and punished, which protects consumers and encourages competitive efficiency.

In the end, leniency offers a practical mix of enforcement and incentive. Regulators use the self-interest of cartel members to benefit the wider public interest. For India, the way forward involves refining its leniency framework by learning from global examples while adapting to its unique legal and institutional situation. This way, leniency can truly become the top feature of cartel enforcement, ensuring that markets remain open, competitive, and fair for consumers.

RESEARCH QUESTIONS

1. How does Section 46 of the Competition Act, 2002, and the CCI (Lesser Penalty) Regulations, 2009, shape India's leniency program?
2. How effective has India's leniency framework been in curbing cartels, and what shows its success or failure?
3. How have the CCI and courts interpreted leniency cases and what does this mean for enforcement?
4. How have the NCLAT and Supreme Court reviewed CCI's leniency orders, and what principles guide their oversight?

RESEARCH OBJECTIVES:

1. To analyze the legal framework governing India's leniency program, particularly Section 46 of the Competition Act, 2002, and the Competition Commission of India (Lesser Penalty) Regulations, 2009.
2. To evaluate the practical success and enforcement impact of India's leniency framework in combating anti-competitive cartel behaviour.
3. To examine judicial and regulatory interpretations of cooperation, confidentiality, and evidentiary standards in India's leniency regime under competition law.

4. To assess the functioning of appellate forums, which includes National Company Law Appellate Tribunal (NCLAT) and the Supreme Court of India, with respect to reviewing orders made by the CCI based on leniency.

RESEARCH METHODOLOGY

This research adopts a doctrinal and analytical methodology, supported by case study and comparative approaches. The doctrinal method involves examining statutory provisions, notably Section 46 of the Competition Act, 2002 and the CCI (Lesser Penalty) Regulations, 2009, along with judicial interpretations by the CCI, NCLAT, and the Supreme Court. Case studies of major cartel decisions, such as the Cement Cartel and Beer Cartel, illustrate how leniency has been applied in practice. A comparative perspective with the US and EU frameworks highlights global best practices. Secondary sources, including scholarly literature and policy reports, are analyzed to assess effectiveness and reforms.

LITERATURE REVIEW:

Jeffrey Fear (2006), This article provides an overview of the rise and fall of cartels since the late 19th century. Until the 1980s, the story of large businesses should be told alongside cartels, not apart from them. Cartels influenced technological development, corporate strategy, and organizational change. Seeing cartels only as conspiracies against the public raises many questions and hides the significant differences in their goals, types, and services¹⁵. Tilottama Raychaudhuri (2021)¹⁶-This research paper mainly focuses on exploring the reasons for recognizing crisis cartels in India. This paper does not support the existence of crisis cartels in India or attempt to justify cartel behavior in any specific case. It calls for a broader approach to cartels formed during crises, especially those that may receive approval from state authorities. Himanshu Sindhwani & Shivali Bharadwaj (2021)¹⁷, A cartel is formed when two or more businesses enter into an agreement, either formally or informally, to serve their own interests, which leads to unfair competition in the market. This paper examines price cartels and the role of competition law in regulating them, ensuring that businesses do not engage in

¹⁵ "Cartels and Competition: Neither Markets nor Hierarchies" *Division of Research, Harvard Business School* (07-011) p-1-2

¹⁶ Tilottama Raychaudhuri et al., *Towards a Crisis Cartel Regime in India – A Case for the Recognition of Crisis Cartels* (Apr. 30, 2021), <https://ssrn.com/abstract=3838277>

¹⁷ Himanshu Sindhwani & Shivali Bharadwaj, *Analysis of Price Cartel and Role of Competition Commission of India to Control This Anti-Competitive Practice* (Nov. 20, 2021), <https://ssrn.com/abstract=3968648>

unfair practices and that consumers have more choices at better prices.

Legal and Institutional Framework of Leniency in India

The foundation of India's leniency program lies in the Competition Act, 2002, which replaced the MRTP Act of 1969¹⁸. The Act recognizes cartels as one of the gravest forms of anti-competitive conduct. Section 3(3) directly prohibits agreements between enterprises or individuals engaged in similar trade that manipulate prices, restrict supply, divide markets, or rig bids. Such agreements are presumed to cause an "appreciable adverse effect on competition" (AAEC), shifting the burden on the parties to prove otherwise. While Section 3 of the Competition Act, 2002 defines what constitutes prohibited cartel behavior, Section 46 introduces the concept of a "lesser penalty." This provision allows the Competition Commission of India (CCI) to reduce fines for cartel participants who voluntarily disclose valuable information about the cartel. Thus, Section 3 establishes liability while Section 46 provides an incentive for self-disclosure, balancing deterrence with cooperation.

The Competition Commission of India (CCI), established in 2003 and fully operational by 2009, is the principal authority enforcing the Act. The CCI performs both investigative and adjudicatory functions. Investigations may be initiated based on complaints, suo motu action, or leniency applications, with the Director General (DG) acting as the investigative arm. The DG (Director General) is the "right arm" of The Competition Commission of India, the investigation wing which looks into information received under Section 26(1)¹⁹ where CCI forms a *prima facie* opinion that there exists a case and need to gather all the details and facts of the case to take a decision in relation to the anti-competitive activity reported upon²⁰. The DG is empowered to summon individuals, search premises, and seize documents. Following investigations, the CCI adjudicates whether there has been a contravention of Section 3 and can impose penalties of up to three times the cartel's profits or 10% of turnover, whichever is higher²¹. Importantly, the CCI also evaluates leniency applications under Section 46 and the Lesser Penalty Regulations, exercising discretion in granting penalty reductions. While this

¹⁸ Monopolies and Restrictive Trade Practices Act, No. 54 of 1969 (India).

¹⁹ Dhruv Rajain, Siddhant Khetawat & Shreya Joshi, Clipping the DG's & CCI's Investigative Power: Recent Trends, (2020) PL (Comp. L) Jan. 75; Competition Act, No. 12 of 2003, § 26, INDIA CODE (2002).

²⁰ "Practice & Procedure" in *Competition Law Module for Administrative & Judicial Training Academies* (Competition Commission of India, New Delhi, 2019).

²¹ The Competition Act, 2002, § 27(b) (India)

flexibility is valuable, it also raises concerns about consistency and predictability.

To operationalize Section 46, the Competition Commission of India (Lesser Penalty) Regulations, 2009 were enacted. These regulations define eligibility, procedures, and benefits. Any enterprise or individual involved in a cartel may apply for leniency, beginning with oral, written, or email submissions, followed by a detailed application. The “priority status” system ensures that the first applicant may receive up to 100% penalty reduction, with subsequent applicants eligible for 50% and 30% reductions depending on the value of their disclosures.²² Applicants must cease cartel involvement, maintain ongoing cooperation, and comply with confidentiality requirements. Amendments in 2017 significantly broadened the scope by allowing individuals—such as managers or employees—to independently apply for leniency. These amendments also reinforced confidentiality by protecting applicants’ identities except when disclosure is legally mandated. More recently, 2023/24 amendments introduced the concept of “leniency plus,” aligning India with global best practices. Under this mechanism, a cartel member already cooperating in one case can secure additional benefits by revealing another cartel. The amendments also mandated written applications for transparency, while preserving urgent oral submissions for exceptional circumstances. These reforms indicate India’s gradual move toward a more sophisticated enforcement regime.

India’s leniency system contains several key features. Central among them is the requirement of a vital disclosure—applicants must provide information that substantially assists or initiates an investigation. A priority marker system ensures that early applicants receive greater benefits, encouraging swift cooperation. Continuous cooperation throughout the investigation and adjudication process is critical; applicants must provide documents, attend hearings, and resolve inconsistencies. Confidentiality protections help encourage disclosures, though they are not absolute. Finally, the CCI’s discretion in determining the quantum of penalty reduction allows for flexibility but creates uncertainty that may discourage potential applicants.

India’s experience can be better understood when placed in a comparative perspective. The United States pioneered the modern leniency framework through the Department Of Justice’s Amnesty Program in the 1970s²³. This program offers complete immunity from prosecution to

²² Arjun Kapur & Ashu Daga, *Dissecting the Intricacies of CCI’s Leniency Plus Regime*, Global Business Law Review Blog – SCCLP (Mar. 30, 2024)

²³ U.S. Department of Justice, Antitrust Division, *Chapter 4: International Anticartel Enforcement and Interagency Enforcement Cooperation*, available at <https://www.justice.gov/atr/chapter-4>

the first cartel member who cooperates fully, provided disclosure occurs before an investigation begins. The U.S. model is particularly effective because cartel conduct attracts not only financial penalties but also criminal sanctions, including imprisonment, thereby heightening the incentive to cooperate. The European Union introduced its first leniency notice in 1996 and refined it in 2002 and 2006. The EU model closely resembles India's approach, offering immunity to the first applicant and reduced fines to others, but it is distinguished by its emphasis on detailed transparency and predictability in penalty reductions, as well as innovative reliance on digital evidence such as emails and instant messaging. Beyond these jurisdictions, international organizations like the OECD and International Competition Network (ICN)²⁴ have established soft-law best practices, advocating for confidentiality, transparency, and cross-border cooperation in cartel enforcement.

In comparison, India's framework shares many similarities with global counterparts—priority status, confidentiality, and cooperation requirements—but also exhibits important distinctions. Unlike the U.S., cartel enforcement in India is limited to civil penalties, with no criminal liability. Compared to the EU, India's system lacks detailed penalty guidelines, resulting in some unpredictability in CCI decisions. Nonetheless, the introduction of leniency plus and the extension of eligibility to individuals demonstrate India's progress toward global convergence.

Judicial and Appellate Treatment of Leniency

Leniency programs are a cornerstone of cartel detection worldwide, but they also generate tension between enforcement efficiency and procedural fairness. In India, while the Competition Commission of India (CCI) implements leniency under Section 46 of the Competition Act, 2002 and the Lesser Penalty Regulations, appellate bodies—especially the National Company Law Appellate Tribunal (NCLAT) and the Supreme Court of India—play a crucial role in shaping how leniency is interpreted. Judicial oversight lends legitimacy to CCI orders but also introduces uncertainty that affects the willingness of cartel members to apply for leniency.

The NCLAT's approach has clarified several important dimensions of leniency. First, it often treats leniency applications as admissions of guilt. In the Beer Cartel appeals, for instance, it held that parties who voluntarily sought penalty reductions effectively acknowledged their

²⁴ OECD & Int'l Competition Network, *OECD/ICN Report on International Co-operation in Competition Enforcement* (OECD Publ'g 2021)

involvement and could not later deny liability. This reliance on estoppel strengthens deterrence but discourages applicants who fear that disclosures will permanently brand them guilty. The decision of NCLAT has provided much clarity on the right of a beneficiary of a leniency application to challenge the order on merits²⁵. At the same time, NCLAT insists that leniency statements alone cannot prove collusion. They must be corroborated by “plus factors” such as emails, minutes, or economic evidence. These plus factors include: concentrated market structure, cartel enforcement mechanisms, stable market shares, intercompetitor communications, and simultaneity of price increases²⁶. The Dry Cell Batteries case illustrates this stance: although Panasonic’s disclosures were valuable, the tribunal required independent confirmation. This insistence ensures fairness but raises the evidentiary burden for applicants. NCLAT has also addressed confidentiality concerns, ruling that while secrecy is important to attract applications, it cannot override natural justice. Accused parties must have access to evidence used against them, even if derived from leniency submissions. This balancing act between confidentiality and fairness protects due process but risks undermining the trust of potential applicants.

The Supreme Court, though it has not ruled directly on Section 46, has indirectly shaped leniency through broader competition jurisprudence. Its decisions stress high evidentiary standards, as seen in the Cement Cartel case, where it held that cartel findings must rest on strong and convincing evidence. Circumstantial evidence is acceptable, but it must be consistent and credible. This principle means that leniency disclosures, unless corroborated, may not survive appellate scrutiny. The Court also emphasizes procedural fairness²⁷, recognizing that CCI proceedings are quasi-judicial and must balance enforcement with the rights of non-applicants to challenge evidence. At the same time, the Court generally exhibits judicial deference to the CCI, intervening only where legal or procedural errors are apparent. This deference underscores the importance of CCI issuing reasoned, well-supported orders, particularly when exercising discretion in granting penalty reductions.

A recurring theme in appellate treatment is the tension between fairness and enforcement efficiency. Section 53B of the Competition Act, 2002²⁸ provides for the right to appeal against

²⁵ Pawan Jagetia v. Competition Comm'n of India, *supra* note 12, at 4 .

²⁶ Christopher R. Leslie, *The Probative Synergy of Plus Factors in Price-Fixing Litigation*, 115 Nw. U. L. Rev. 1581 (2021).

²⁷ Competition Comm'n of India v. Schott Glass India Pvt. Ltd., 2025 LiveLaw (SC) 557 (India).

²⁸ Competition Act, No. 12 of 2002, § 53B (India).

the decision of the CCI before the NCLAT. It is a settled position in law that the right to appeal is created by the statute, which means that the right to appeal can only be limited or restricted by the provisions of the statute that creates it. In other words, the right to appeal is not an absolute right, and it can be subject to certain conditions or restrictions²⁹. Effective leniency requires speed, secrecy, and flexibility, while courts demand transparency, disclosure, and opportunities for contestation. For the CCI, swift insider disclosures are crucial to break cartels. For the judiciary, due process is paramount. This clash often prolongs litigation. For firms, lengthy appeals dilute the certainty and immediacy of leniency benefits, reducing its appeal as a strategy.

The implications for applicants are significant. Predictability is vital: applicants are more likely to cooperate if penalty reductions are consistent and clear. Judicial scrutiny, however, introduces uncertainty. Confidentiality is another concern; if courts allow wide disclosure of leniency materials, applicants risk reputational harm and exposure to civil damages claims. Depending on the legal system, victims of cartel infringements may ask civil courts to order disclosure of documents³⁰. The requirement of corroboration means only applicants with strong evidence—such as documents or communications—are likely to benefit, leaving weaker cartel members with little incentive. Finally, litigation delays undermine the quick resolution that makes leniency attractive. Collectively, these factors explain why India's uptake of leniency remains limited compared to the United States or EU.

Placing India in a comparative perspective highlights its middle-ground position. In the European Union, courts also require corroboration of leniency submissions, but they recognize the European Commission's discretion in penalty reductions, balancing fairness with enforcement efficiency³¹. In the United States, by contrast, leniency grants full immunity, and most cartel cases are resolved through negotiated settlements, minimizing appellate review. This makes the U.S. program the most successful globally. India resembles the EU in its insistence on corroboration but lacks the U.S. model's predictability and certainty of immunity. This reduces deterrence and limits the program's ability to attract applicants.

²⁹ Shourya Mitra & Ishaan Saraswat, *Appeals in Competition Law Enforcement: A Costly Ticket*, CBCL NLUI (Apr. 8, 2023)

³⁰ International Competition Network, *CWG Good Practices for Incentivising Leniency* (May 2019)

³¹ Dunne, Niamh, From Coercion to Cooperation: Settlement within EU Competition Law (November 5, 2019). Global Centre for Competition Law Annual Conference in January 2019, LSE Legal Studies Working Paper No. 14/2019

In conclusion, India's leniency framework under Section 46 of the Competition Act, 2002, and the Lesser Penalty Regulations, 2009, has become an important tool in enforcing cartel rules. It addresses the secrecy of collusion and encourages whistleblowing. Judicial bodies, especially the NCLAT and the Supreme Court, have influenced this framework by focusing on strong evidence, fairness, and transparency. They have insisted on corroboration, balanced confidentiality with fairness, and required clear decisions. While these protections improve accountability, they also might discourage potential applicants due to uncertainty and delays in legal processes. Comparatively, India's approach shares the EU's focus on corroboration but does not offer the same certainty of immunity or criminal liability, which makes the US model more effective. Recent reforms, such as the 2017 extension to individuals and the 2023/24 "leniency plus" system, show progress toward global best practices. For the program to reach its full potential, it needs more clarity, consistency, and faster decision-making. A balanced framework that provides real incentives while protecting due process will help ensure that India's leniency system continues to be a key part of effective cartel prosecution.

Effectiveness of India's Leniency Programme

Cartels are among the most difficult anti-competitive practices to detect, given their reliance on secrecy and minimal documentation. Globally, leniency programmes have become the most effective enforcement tool by incentivising cartel members to disclose inside information in exchange for reduced penalties. In India, Section 46 of the Competition Act, 2002 and the CCI (Lesser Penalty) Regulations, 2009 form the statutory foundation of this regime. Since its introduction, the leniency programme has strengthened enforcement but its overall effectiveness remains contested. Despite its implementation in 2009, the Competition Commission of India (CCI) only issued its first leniency decision in 2017, with just a dozen more following³². This chapter assesses its performance by analysing successes, deterrence effects, and persistent challenges, while drawing lessons from international experience.

Successes of the Leniency Programme

One of the clearest indicators of success is enhanced detection. Since 2009, most large cartel cases—including the Beer Cartel, Dry Cell Batteries Cartel, and Automobile Bearings

³² Anmol Kapoor, *Leniency Programme Under Competition Law in India—A Comparative Study With United States*, Soc. Sci. Rsch. Network (SSRN), <https://ssrn.com/abstract=4889505> (July 6, 2024).

Cartel³³—have been unearthed through leniency applications. Insider disclosures provided crucial evidence such as WhatsApp messages, emails, and meeting records, which the CCI relied on to establish collusion. These cases underline that without leniency, many cartels would likely have remained hidden.

Leniency also enables efficient resource use. Cartel investigations normally require significant time and technical expertise, involving economic analysis, dawn raids, and reliance on indirect evidence. Insider cooperation reduces these burdens by supplying direct proof, allowing the CCI to allocate resources more effectively across multiple cases.

A further success lies in the deterrence effect. Even when rarely used, the mere availability of leniency disrupts trust among cartel members, who may fear betrayal by their partners. Courageous leniency programs that reward spontaneously self-reporting parties may instead completely and costlessly deter them³⁴. This destabilisation makes collusion harder to sustain. Although difficult to quantify, such deterrence is recognised both in economic theory and in judicial observations.

Finally, India's adoption of international best practices, including the introduction of “leniency plus” in 2023/24, shows a move towards convergence with global regimes. The leniency plus mechanism is targeted at multimarket cartelist³⁵ that is companies operating solely within a single market are ineligible to benefit from it. This reform incentivises disclosure of multiple cartels, broadening detection possibilities and aligning India with the EU and US approaches.

Limitations and Challenges

Despite these achievements, the programme faces structural and procedural obstacles.

First, the number of applications remains modest compared to mature jurisdictions. Cartels gain control, the press is intimidated, and the public is uninformed³⁶. Many cartelist still prefer silence over self-reporting, often due to low awareness, fear of reputational damage,

³³ *In re: Cartelisation in the supply of Bearings (Automotive and Industrial)*, Suo Motu Case No. 07 (02) of 2014, Competition Comm'n of India.

³⁴ Giancarlo Spagnolo, *Optimal Leniency Programs*, FEEM Working Paper No. 42.2000 (2000).

³⁵ *Leniency Plus: Rewarding Cooperation to Uncover Hidden Cartels*, RFMLR RGNUL, Apr. 23, 2024

³⁶ Mike O'Connor, *The Zacatecas Rules: Cartel's Reign Cannot Be Covered*, Comm. to Protect Journalists (Feb. 13, 2013), <https://cpj.org/2013/02/attacks-on-the-press-mexican-self-censorship-takes/>.

or uncertainty about penalty reductions.

Second, confidentiality concerns persist. Although strengthened in 2017, protections are not absolute: appellate forums have held that disclosures may be shared where natural justice requires. The risk of exposure—whether to competitors, consumers, or foreign authorities—deters potential applicants.

Third, judicial delays significantly erode effectiveness. Firms that cooperate with the CCI face years of appeals before the NCLAT and Supreme Court, during which financial and reputational uncertainty lingers. This undermines the promise of immediate and certain benefits, which is the core rationale of leniency.

Fourth, the evidentiary burden is high. Courts consistently require corroboration of leniency statements with independent records. While ensuring fairness, this discourages applicants who lack strong documentation.

Fifth, discretion in penalty reductions is inconsistently applied. Even when the Commission applied a sliding scale, they considered the minimum reduction possible³⁷. Although the CCI uses gradation (100%, 50%, 30%), the reasoning behind specific percentages is often opaque. In cases like the Beer Cartel, the methodology was not clearly explained, creating unpredictability and discouraging cooperation.

Lastly, India is not isolated from the global decline in leniency applications. Worldwide, firms are increasingly reluctant to self-report because disclosures often trigger follow-on private damages suits. India currently sees fewer such claims, but as private enforcement grows, similar risks may undermine the programme further.

Assessment of Effectiveness

Measured against its objectives, India's leniency programme is partially effective. It is strong in detection, having uncovered some of the largest cartels in Indian history. Its deterrent effect exists but is weakened by relatively low penalties and long litigation timelines. Its weakest aspect is predictability: lack of transparency in penalty gradation and confidentiality gaps discourage potential applicants. India lacks a well-defined marker system which is one of the

³⁷ Aditya Bhattacharjea & Oindrila De, *India's Cartel Penalty Practices, Optimal Restitution and Deterrence*, IEG Working Paper No. 424 (2021).

reasons of a poor effectiveness of leniency program in India³⁸. Thus, while the programme has demonstrated its potential, it has yet to mature into a consistently reliable enforcement mechanism.

Lessons from International Experience

Comparisons with international practice provide guidance. In the United States, the attraction of leniency lies in full immunity for the first applicant combined with severe criminal sanctions for others, creating sharp incentives to disclose. India's civil-only system lacks such contrast, reducing the urgency to apply. In the European Union, transparent and well-publicised guidelines ensure predictability, which enhances trust in the system³⁹. India could benefit from similar clarity in penalty determination. OECD and ICN best practices also stress confidentiality and swift processing, both of which are undermined in India by judicial delays⁴⁰.

Conclusion

India's leniency programme has proven to be a powerful enforcement tool, responsible for exposing collusion in industries ranging from beer to batteries and bearings. It has saved enforcement resources and fostered convergence with global standards. Yet, challenges—confidentiality doubts, judicial delays, evidentiary hurdles, and inconsistent discretion—continue to limit its deterrent capacity. For the programme to achieve full effectiveness, India must prioritise transparency, strengthen confidentiality protections, and ensure speedier case resolution. Borrowing from the EU's predictability and the US's deterrence model would enhance credibility. Ultimately, the success of the programme depends on whether firms perceive leniency as safe, worthwhile, and dependable—an assessment shaped not only by CCI design but also by judicial treatment and enforcement culture.

Policy and Reform Recommendations

Introduction

India's leniency programme has uncovered several major cartels—including those in beer, dry

³⁸ Udai S. Mehta & Suchismita Pati, *Designing Effective Leniency Programme for India: Need of the Hour*, CUTS International, Discussion Paper (2019), https://cuts-ccier.org/wp-content/uploads/2019/01/Designing_Effective_Leniency_Programme_for_India-Need_of_the_Hour.pdf.

³⁹ Commission Notice on the Handling of Complaints by the Commission Under Arts. 81 and 82 of the EC Treaty, 2004 O.J. (C 101) 5.

⁴⁰ ICN, Anti-cartel Enforcement Manual, Chapter 2, "Drafting and implementing an effective leniency policy" (April 2014) 4.

cell batteries, and automobile bearings—but its usage remains limited compared to global benchmarks. Concerns about confidentiality, unpredictability in penalty reductions, evidentiary requirements, and lengthy litigation have undermined its appeal. If leniency is to remain the “crown jewel” of cartel enforcement, reforms must enhance its transparency, credibility, and deterrent value. This chapter sets out key policy and procedural reforms, drawing lessons from international best practices while tailoring them to India’s institutional context.

Clarifying Evidentiary Status

One of the biggest uncertainties is how leniency disclosures are treated in enforcement. The CCI and NCLAT view such applications as admissions of cartel conduct but simultaneously demand corroboration. This dual stance discourages applicants. The programme would benefit from clear guidelines that define the evidentiary value of leniency submissions. Explicitly stating that cooperation, not mere admission, is the basis for penalty reductions similar to EU practice⁴¹ would provide applicants with greater certainty. Recognizing that the first applicant gains immunity if their information materially advances the case could further incentivize self-reporting.

Strengthening Confidentiality

Confidentiality is central to leniency but has been diluted by judicial insistence on disclosure in the interest of natural justice. Applicants fear reputational damage, commercial retaliation, and even exposure to foreign proceedings. Reforms should enshrine strict non-disclosure rules, with exceptions only under judicial oversight. Stronger attorney-client privilege and the use of redaction systems can safeguard sensitive business information while still allowing adjudicators to verify evidence. Enhanced confidentiality would restore applicant confidence.

Clarifying “Leniency Plus”

The 2023/24 introduction of “leniency plus” marks a significant step but remains operationally vague. Leniency Plus is aimed to attract an increase of leniency applications by encouraging undertakings that are proven to have been taking part of a cartel in one market to report their

⁴¹ Congress of Local and Regional Authorities, Council of Europe, Res. 444 (2019), Debated and Adopted by the Congress, 2d Sitting, CG36(2019)14 explanatory memorandum (Apr. 3, 2019) (rapporteur: Josan Meijers, Neth.).

collusive agreements in other markets⁴². Without clarity on eligibility, timing, and scope, potential applicants remain hesitant. Detailed regulations modeled on U.S. practice—where disclosure of a second cartel yields substantial reductions in the first—would provide certainty. Extending the benefit to individuals as well as corporations could further broaden participation.

Encouraging Individual Applications

Since 2017, individuals have been allowed to apply for leniency, but uptake has been minimal due to reputational and career risks. Separate guidelines for individual applicants are needed, including provisions for anonymity, immunity from employment retaliation, and clarity on liability under related laws. Drawing from U.S. practice, immunity for individuals alongside corporations could motivate executives to disclose incriminating evidence. Linking leniency with whistleblower protection would add another safeguard.

Reducing Litigation Delays

The benefits of leniency are blunted by prolonged appeals before NCLAT and the Supreme Court. To preserve incentives, fast-track appellate procedures should be established for leniency cases, with strict timelines for disposal. The CCI must also ensure well-reasoned orders, particularly in explaining penalty reductions, to enhance appellate durability. Exploring settlement mechanisms similar to EU practice could reduce drawn-out litigation and offer quicker resolution. CCI has also notified Monetary Penalty Guidelines with respect to the determination of monetary penalty to be levied on the enterprise(s) and/or persons for any contravention of the provisions of the Act. The much-awaited monetary penalty guidelines have been framed in line with best practices and to ensure that penalty imposed is proportional to the anti-competitive harm caused to the market by the contravening entities/ persons⁴³.

Ensuring Transparency in Penalty Reductions

Applicants hesitate when reductions appear arbitrary. Clear guidelines should be issued on how reductions are determined, considering factors like timing, evidentiary contribution, and cooperation. Publishing anonymized data on past penalty reductions would enhance

⁴² Yassine Lefouili & Catherine Roux, *Leniency Programs for Multimarket Firms: The Effect of Amnesty Plus on Cartel Formation*, at 1.

⁴³ Press Information Bureau, India, *Competition Commission of India Notifies Three Distinct Regulations on Determination of Turnover, Settlement, Commitment and Penalty Guidelines in Relation to an Enterprise* (Mar. 8, 2024), <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2012824>.

predictability without undermining confidentiality. This mirrors the EU's model, where transparent methodology builds applicant trust.

Integrating Digital Forensics

As cartels increasingly rely on digital platforms, the CCI must enhance its technological capabilities. Investment in data screening tools, AI-driven analytics, and forensic training would help corroborate leniency applications and strengthen evidentiary durability in appeals. Partnerships with telecom and IT authorities could further aid in tracing digital footprints. Stronger forensics would directly address judicial demands for corroboration.

Global Cooperation and Comparative Learning

Given the rise of cross-border cartels, India's leniency framework must align with global practices. Formal cooperation with networks such as the OECD, ICN, and BRICS forums could facilitate information sharing. Harmonizing procedures on leniency plus, confidentiality, and simultaneous applications across jurisdictions would reassure multinational firms. Regional cooperation within South Asia could also help address cartels that exploit jurisdictional gaps.

In a nutshell, India's leniency regime has proven indispensable in detecting cartels, yet its long-term effectiveness depends on reform. Clarifying evidentiary value, ensuring confidentiality, refining leniency plus, and empowering individual applicants would enhance its credibility. Fast-tracking appeals and adopting transparent penalty guidelines are essential to build predictability. Strengthening digital forensics and engaging in international cooperation would ensure resilience in a rapidly evolving enforcement landscape. Ultimately, reforms must strike a balance between fairness and enforcement efficiency. By learning from the EU's predictability and the U.S.'s deterrence model, India can refine its programme into a credible, widely used tool against cartels that harm markets and consumers.

Conclusion and Way Forward

Cartels are among the most damaging forms of anti-competitive conduct, yet also the hardest to detect due to their secrecy and informality. India's leniency framework, rooted in Section 46 of the Competition Act, 2002 and the CCI (Lesser Penalty) Regulations, 2009, has emerged as a central enforcement tool. It has uncovered significant cartels in sectors such as cement, beer, dry cell batteries, and bearings, proving that leniency can destabilize collusion and provide

regulators with otherwise inaccessible insider evidence.

However, as this paper has shown, effectiveness remains partial rather than complete. While detection has improved, deterrence is weakened by judicial delays, confidentiality concerns, and inconsistency in penalty reductions. Comparisons with the EU and US highlight that India's programme must evolve to balance procedural fairness with enforcement efficiency.

Key Suggestions for the Road Ahead

1. Strengthen Predictability: Issue detailed guidelines on penalty reductions and publish anonymized data on past cases to build confidence among applicants.
2. Protect Confidentiality: Guarantee strict non-disclosure of applicant identities and adopt stronger privilege protections, limiting exceptions to rare, court-supervised situations.
3. Operationalize Leniency Plus: Provide clear rules on eligibility and benefits to encourage disclosure of multiple cartels, expanding detection.
4. Empower Individual Applicants: Extend whistleblower-style protections to executives, ensuring anonymity and safeguarding against retaliation.
5. Speed Up Enforcement: Introduce fast-track procedures for cartel appeals and strengthen digital forensics to corroborate insider evidence quickly and reliably.
6. Global Convergence: Deepen cooperation with OECD, ICN, and regional forums to tackle cross-border cartels and harmonize India's approach with international best practices.

Final Reflection

India's leniency programme has demonstrated its value but has yet to achieve its full deterrent potential. By refining confidentiality safeguards, ensuring consistent and transparent application, and aligning with global norms, India can transform its leniency regime into a credible, predictable, and widely used enforcement tool. Ultimately, the future of Indian competition law depends on striking the right balance: encouraging self-reporting while

upholding fairness, thereby protecting markets, strengthening consumer welfare, and ensuring that cartels no longer operate with impunity.