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# THE ROLE OF THE COMPETITION COMMISSION OF INDIA IN PREVENTING CARTELIZATION

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Gargi Mukherjee, Research Scholar, ICFAI Law School, IFHE, Hyderabad

## ABSTRACT

The presence of Cartelization results in a substantial distortion in competitive markets, causing a negative impact on Consumer Welfare, Innovation, and Economic Efficiency. Within India, the Competition Commission of India (CCI) acts as the main governing body that has been established by the Competition Act 2002 to deal primarily with issues relating to Anti Competitive Agreements, including Cartels. The paper focuses on the ability of CCI to detect, investigate, and punish cartelisation within Cement, Pharmaceuticals, and Automobiles.

The goal of the study is to assess whether the legal framework in place for competition law and the enforcement processes currently being applied by the Commission of Competition will adequately govern competition between businesses operating in India. To do this, the study will use a doctrinal research approach which will include a review of statutorily regulated legislation, judicial case law and current operational practices, as well as interpreting factors that impact the existence of cartels through law and economics to provide a more in-depth understanding of how a cartel operates and how to prevent them from existing within the marketplace. The purpose of this research will be to contribute to the body of knowledge regarding the Regulation of Cartels by identifying both institutional and procedural aspects of the regulatory framework for Cartels; and to establish a basis for developing stronger enforcement to promote a competitive market in India.

**Keywords:** Competition Commission of India; Cartelization; Antitrust enforcement; Oligopoly; Leniency

## 1. Introduction

A competitive marketplace is a system in which the rules of fairness and transparency allow the economy to cooperate efficiently, develop new products and services through innovation, and ultimately create value for consumers.<sup>1</sup> Cartels, or groups of firms that work together to fix prices, restrict production, or divide the market among themselves, disturb the equilibrium that is sought by creating price- and output-manipulating agreements, resulting in inflated prices for consumers, reduced alternatives for consumers, and overall market inefficiencies.

In response to the issues associated with cartel behavior, India passed the Competition Act, 2002, which replaced the Monopolies and Restrictive Trade Practices (MRTP) Act. The Competition Commission of India (CCI), as an independently managed regulator and quasi-judiciary authority, was created to prohibit anti-competitive conduct, promote competition, and protect consumer interests. The CCI has investigated many cartels in various industries, including but not limited to cement, pharmaceuticals, and motor vehicles, and has levied substantial sanctions against the cartels, as well as developed means for enforcement. However, cartels continue to exist, leading to questions about the success of enforcement strategies and the institutional capacity of the CCI.

This study utilizes a doctrinal research methodology that relies on both primary and secondary sources. Primary sources are composed of primary statutory provisions under the Competition Act, 2002, as well as relevant decisions issued by the Competition Commission of India (CCI) and appellate authorities. Secondary sources of information include relevant literature in academia, policy reports, and other scholarly analysis. The methodology is grounded in qualitative and analytical methods and includes statutory analysis, case law analysis, and application of certain economic theories, including oligopoly theory and game theory, to explain cartelization and difficulties in enforcing competition law. The research is limited to the existing framework of Indian competition law so as to examine selected landmark cases only; therefore, there is no empirical or quantitative component included.

This study also analyses and evaluates the legal framework that governs cartelization under Indian law, the CCI's efforts to enforce laws against cartels and their effectiveness, key cases

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<sup>1</sup> OECD (2019) Fighting Hard Core Cartels: Harm, Effective Sanctions and Leniency Programmes. Paris: OECD Publishing.

[https://www.internationalcompetitionnetwork.org/wp-content/uploads/2019/11/SP\\_Cartel2018.pdf?utm\\_source=chatgpt.com](https://www.internationalcompetitionnetwork.org/wp-content/uploads/2019/11/SP_Cartel2018.pdf?utm_source=chatgpt.com).

of cartelization that have been prosecuted and challenges inherent in detecting cartels and prosecuting them.

### **1.1 Literature Review**

Cartelization in competition law is important because it is detrimental to both market efficiency and consumer welfare. Posner (2001) describes cartel arrangements as collusion between parties in order for them to maximize their profits, while Bork (1978) explains how cartel arrangements result in economic inefficiencies and deadweight loss through these collusive agreements. Finally, ongoing studies have stressed the importance of having an adequate enforcement mechanism in place to deter and punish cartelization (Whish & Bailey, 2015; OECD, 2019) through both institutional integrity and via leniency programs used to detect and discourage cartel behavior, respectively.

In terms of India, Bhattacharjea (2016) points out that the Competition Act, 2002, has a robust legal framework; however, it is difficult to enforce because of the secret nature of cartels and reliance on economic/evidential proof for enforcement. Various recent academic studies note that cartel enforcement is plagued by procedural impediments like judicial delays and limited resources for investigation.

Ultimately, the accumulated body of knowledge on the issues of cartel enforcement has been fragmented; there is little attempt to integrate the largely separate bodies of law, economics, and institutions into a cohesive whole. Hence, this study adds to the existing body of knowledge about cartel enforcement by utilizing the combination of a doctrinal and economic approach for examining cartel enforcement.

## **2. Theoretical And Legal Framework On Cartelization In India**

A successful analytic framework needs to be created to look at cartelization as an economic and legal issue. This means that it is important to examine the economic theories associated with cartel behaviour and the legal measures associated with cartel behaviour in order to maximise the effectiveness of the legal methods used to enforce anti-cartel laws. Cartelisation in economic terms tends to be more prominent in the context of oligopolistic markets, where a limited number of firms are operating in the respective industry.<sup>2</sup>

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<sup>2</sup> Jean Tirole, *The Theory of Industrial Organization* (MIT Press, 1988).

Firms in an oligopolistic market will have a degree of interdependence due to the market structure, which makes it easy for firms to coordinate their objectives and develop a sustainable mechanism to collude.<sup>3</sup> The basic premise of game theory is the prisoner's dilemma, which illustrates how, in many cases, even though there are market incentives for firms to compete, they find that the best option for maximising their joint profit is to collude with each other. While this represents an equilibrium, it is also an equilibrium that cannot be sustained given the numerous incentives for firms to deviate from collusion, and thus requires regulatory intervention.<sup>4</sup> Cartels are allocatively inefficient and produce less consumer surplus and create deadweight losses; thus, there exists a strong legal basis for their prohibition.<sup>5</sup>

These concepts support modern enforcement principles found within competition law; hence, they form a key basis for enforcement within the competition law system of India. The Indian Competition Act of 2002 establishes that cartel behaviour will be considered a restriction on competition, as prohibited by Section 3 of the Act, which prohibits a party from entering into an agreement that restricts competition or has the potential to significantly restrict competition. Further provisions of Section 3 (Subsection 3(3)) outline examples of horizontal agreements that are presumed to have an adverse effect on competition, including the following:

- Price fixing
- Quantity of output restrictions and limits placed on production and/or outputs
- Market allocation
- Bid rigging

To demonstrate a violation of the Act, the burden of proof will shift to the parties involved in the horizontal agreement. Section 19(1) empowers the Competition Commission of India (CCI) to impose significant penalties on companies for anticompetitive conduct that includes fines of up to 10% of the company's turnover or three times the profit obtained from its anticompetitive actions, whichever amount is higher. This serves as a reflection of deterrent theory as described

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<https://mitpress.mit.edu/9780262200714/the-theory-of-industrial-organization/>.

<sup>3</sup> Dennis W. Carlton & Jeffrey M. Perloff, *Modern Industrial Organization* (Pearson, 4th ed.).

<https://www.pearson.com/>.

<sup>4</sup> Robert Gibbons, *Game Theory for Applied Economists* (Princeton University Press, 1992).

<https://press.princeton.edu/books/paperback/9780691003955>.

<sup>5</sup> N. Gregory Mankiw, *Principles of Economics* (Cengage Learning). <https://www.cengage.com/>.

by economists.

The leniency program established by the CCI is a practical application of game-theory principles whereby individual members of a cartel are encouraged to take the risk of leaving the cartel voluntarily, disclosing information as they do so, and being given reduced penalties for their cooperation.<sup>6</sup> This program helps destabilise cartels and facilitate the detection of their operations. Therefore, the Indian legal framework is firmly rooted in economic theory; it employs both preventive regulation and deterrent enforcement against the pernicious cartelization's complex and clandestine nature.

### **3. Institutional Role, Powers and Enforcement of the Competition Commission of India**

The CCI forms the foundation of India's competition law system and has the responsibility for preventing collusion among competitors and preserving competitive markets.<sup>7</sup> The CCI was created under the Competition Act (2002) and functions as a hybrid authority, performing various regulatory, investigatory, adjudicative, and advocacy roles.<sup>8</sup> The CCI's multifaceted mandate gives it the ability to combat collusive behaviours using both ex ante (preventative) as well as ex post (punitive) means.

The effectiveness of the CCI cannot only be attributed to its powers as set out in statute; it will also depend on how well those powers are exercised, given that markets are becoming more complex and dynamic. The CCI's capabilities as a modern competition authority and the structural constraints on its ability to enforce laws can be identified through a thorough evaluation of its institutional structure.<sup>9</sup>

#### **3.1 Regulatory and Quasi-Judicial Authority**

As a quasi-judicial organisation, the CCI has been given the authority to interpret and enforce only the provisions of the Competition Act, especially those relating to anti-competitive

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<sup>6</sup> Wouter Wils, *Leniency in Antitrust Enforcement* (World Competition Journal). <https://kluwerlawonline.com/>.

<sup>7</sup> Government of India, Report of the High-Level Committee on Competition Policy and Law (Raghavan Committee Report, 2000). [https://www.cci.gov.in/sites/default/files/ckfinder/files/Report\\_of\\_the\\_High\\_Level\\_Committee\\_on\\_Competition\\_Policy\\_and\\_Law.pdf](https://www.cci.gov.in/sites/default/files/ckfinder/files/Report_of_the_High_Level_Committee_on_Competition_Policy_and_Law.pdf).

<sup>8</sup> Competition Act, 2002 (Sections 7–9 establish the CCI; Sections 18–20 outline duties and functions). [https://www.cci.gov.in/sites/default/files/cci\\_pdf/competitionact2012.pdf](https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf).

<sup>9</sup> World Bank Group, *Competition Policy in India: Building Institutions for Effective Enforcement*. <https://openknowledge.worldbank.org/handle/10986/>.

agreements under Section 3 of the Act.

- i. The CCI adjudicates those cases which relate to cartelisation through an assessment of whether such agreements have resulted in an appreciable adverse effect on competition (AAEC).<sup>10</sup>
- ii. The CCI has broad discretion in its evaluation of both legal and economic evidence when adjudicating cases, often weighing formal statutory interpretation against the realities of market conditions.

### **3.2 Investigative Powers through the Director General**

The CCI's investigative framework has an investigative arm, the Office of the Director General (DG).

- i. The DG has the authority to launch a full investigation, issue requests for the attendance of persons, obtain evidence (in the form of both documents and electronically), and obtain written statements of people interviewed in investigations.
- ii. The DG can conduct search and seizure operations called "dawn raids" to uncover hidden communications/documents and other agreements.<sup>11</sup>

### **3.3 Power to Gather, Interpret and Rely on Economic Evidence**

Increasingly, economic inferences rather than direct evidence are used in enforcing modern cartels, and the CCI has continued to apply this model as well.

- i. The application of the following tools allows the Commission to detect collusion: price parallelism, concentration in markets, limits on output, and bidding patterns.
- ii. The tools used by the Parliament include considering legal principles and economic models of the market, as well as market definitions, assessment of dominance, and

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<sup>10</sup> Competition Act, 2002, Section 19(3) (factors for AAEC).  
[https://www.cci.gov.in/images/media/competition\\_act/competitionact2012.pdf](https://www.cci.gov.in/images/media/competition_act/competitionact2012.pdf).

<sup>11</sup> Competition Act, 2002, Section 41(3) (search and seizure with court approval).  
[https://www.cci.gov.in/images/media/competition\\_act/competitionact2012.pdf](https://www.cci.gov.in/images/media/competition_act/competitionact2012.pdf).

assessment of competitive harm.<sup>12</sup>

### 3.4 Adjudicatory and Enforcement Powers

The Competition Commission of India possesses a wide array of large amounts of authority to accomplish two goals: deterring those who engage in anti-competitive practices and deterring anti-competitive behaviour.

- i. These authorities include the authority to issue cease and desist orders against those who are engaged in anti-competitive conduct, which gives the CCI the authority to stop an organisation from continuing to carry out anti-competitive conduct;
- ii. To impose large fines, calculated as a percentage of gross revenue or net profits, thus increasing the cost of collusion; and
- iii. In certain situations, the CCI has the authority to recommend structural or behavioural remedies to mitigate competitive harm in the market.<sup>13</sup>

### 3.5 Leniency Programme (Lesser Penalty Regime)

The leniency programme is a key component of CCI enforcement.

- i. It provides incentives to encourage disclosure of cartel participation in return for a reduction in penalty through cooperation with authorities.<sup>14</sup>
- ii. The scheme has been designed so as to provide the first leniency applicant with the maximum reduction in penalties, thereby creating a 'race to confess' among cartel participants.

### 3.6 Regulation of Trade Associations and Information Exchange

The regulation of trade associations is strongly related to cartel enforcement since they are

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<sup>12</sup> Organisation for Economic Co-operation and Development, *Competition Assessment Toolkit*. <https://www.oecd.org/competition/toolkit>.

<sup>13</sup> Competition Commission of India, Case Decisions & Orders. <https://www.cci.gov.in/>.

<sup>14</sup> Competition Act, 2002, Section 46 (Power to impose lesser penalty). [https://www.cci.gov.in/sites/default/files/cci\\_pdf/competitionact2012.pdf](https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf).

usually an indirect means by which firms collude with each other.

- i. The CCI examines activities of these trade associations like sharing of data among member firms, sharing of prices between members and coordinating decisions among members.
- ii. The CCI would take action against such trade associations when they facilitate the exchange of sensitive commercial information by members that may facilitate collusion between those members.<sup>15</sup>

### 3.7 Advocacy and Competition Promotion Functions

Enforcement is one of the CCI's roles; it also serves as an advocate for competition through its many preventive activities.

- i. The CCI fulfills a policy advisory function, whereby it makes suggestions for new government policies to assist regulatory agencies in creating a regulatory scheme that does not impede competition by either intent or effect.<sup>16</sup>
- ii. Through workshops, outreach programmes and consultations, the CCI will engage in activities that promote voluntary compliance by stakeholders.<sup>17</sup>

### 3.8 Compliance Monitoring and Post-Enforcement Oversight

Penalty enforcement does not alone suffice for enforcement purposes. Enforcement requires long-term compliance.

- i. The CCI performs monitoring of compliance and may pursue additional penalties for either noncompliance/non submission of orders as a result of the firm failing to comply with the terms of the CCI orders.<sup>18</sup>

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<sup>15</sup> International Competition Network (ICN), Cartel Enforcement Manual – Information Exchange. <https://www.internationalcompetitionnetwork.org/>.

<sup>16</sup> Competition Commission of India, Section 49 of the Competition Act, 2002 (Advocacy function). <https://www.cci.gov.in/>.

<sup>17</sup> Competition Commission of India, *Advocacy Booklets & Outreach Initiatives*. <https://www.cci.gov.in/advocacy>.

<sup>18</sup> Competition Act, 2002, Sections 27, 42 & 43. [https://www.cci.gov.in/sites/default/files/cci\\_pdf/competitionact2012.pdf](https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf).

- ii. Additionally, enforcement activities contribute to the establishment of a long-term supply chain discipline through regulatory compliance.

The CCI's comprehensive and able-to-leverage its institutional framework is fundamentally affected by the various systemic constraints placed upon it by virtue of the concentration of investigative and adjudicatory powers while efficient, such concentration requires that substantial procedural safeguards exist to ensure fairness. The increased reliance on economic evidence and the subsequent need for greater ongoing capacity building and technological expertise are two additional systemic constraints affecting the practical effectiveness of the CCI.

The rapidly-changing structure of the marketplace particularly in relation to this will require some significant modifications of various aspects of the CCI's capacity to adapt institutionally, technologically, and procedurally.<sup>19</sup> In addition to the challenges posed by increasing levels of economic evidence, the CCI faces the same inability to address challenges posed by continuously evolving marketplaces with existing enforcement mechanisms.<sup>20</sup> Therefore, the future practical effectiveness of the CCI will rely, in large part, upon the CCI's ability to change and grow both institutionally and procedurally.

#### **4. CASE STUDIES AND ENFORCEMENT TRENDS**

One of the best ways to understand how well cartel enforcement has been in India is to look at significant decisions made by the Competition Commission of India (CCI). These cases demonstrate both the evolution of the Commission's enforcement strategy and some of the structural and evidential difficulties involved in detecting cartels.

##### **4.1 The Cement Cartel Case**

The most notable cartel case in India was that of alleging price-fixing and production constrained by smaller firms to fix prices and restrict output.<sup>21</sup> These companies were seen to have entered into agreements and had displayed substantial evidence of fixing prices and

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<sup>19</sup> Competition Commission of India, *Market Study on E-commerce in India* (2020).

[https://www.cci.gov.in/sites/default/files/whats\\_newdocument/Market-study-on-ecommerce-in-India.pdf](https://www.cci.gov.in/sites/default/files/whats_newdocument/Market-study-on-ecommerce-in-India.pdf).

<sup>20</sup> Ezrachi, Ariel & Stucke, Maurice, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy* (Harvard University Press, 2016).

<sup>21</sup> Builders Association of India v Cement Manufacturers' Association, CCI Order dated 20 June 2012. <https://www.cci.gov.in/sites/default/files/292012.pdf>.

limiting production based on the CCI's investigation of the parallel analysis of economic factors and using both circumstantial evidence and indirect evidence to establish the existence of a cartel; however, the following factors led the CCI to determine that the use of circumstantial evidence and probabilistic empirical economic evidence could establish the existence of a cartel.<sup>22</sup> Specifically, the CCI considered the following factors:

- a. The parallelism of pricing between the various manufacturers
- b. The sudden and uniform cutback in production by the various manufacturers, and
- c. The conduct of the manufacturers was inconsistent with competitive behaviour.

Legally, the CCI's approach in establishing the existence of a cartel or the use of plus-factor analysis i.e., when evaluating whether parallel conduct of several manufacturers can be considered to be collusive conduct, in addition to the parallel conduct, plus factors are to be considered is consistent with other jurisdictions with similar cartel enforcement, including many countries that provide little or no direct evidence of cartels.<sup>23</sup>

Although the outcome of this case improved enforcement, it also revealed significant issues with the CCI's reliance on circumstantial and indirect evidence creating uncertainty in whether an appeal would overturn the decision because circumstantial evidence and indirect evidence are much weaker than direct evidence for supporting an order. In addition, even though this case broadened the spectrum of evidence for the CCI in establishing a determination of a cartel, it demonstrates the necessity for more clearly defined evidentiary standards of courts on economic evidence.

#### **4.2 Tyre Manufacturers Case: Role of Trade Associations in Facilitating Collusion**

The CCI found that several of the largest tyre companies were in collusion through their association to coordinate pricing and manipulate markets.<sup>24</sup> This was done through their association, whereby members of the trade association could share sensitive pricing

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<sup>22</sup> Competition Commission of India, *Order in Cement Cartel Case* (2012). <https://www.cci.gov.in/sites/default/files/292012.pdf>.

<sup>23</sup> *Cement Manufacturers Association v Competition Commission of India*. <https://indiankanon.org/doc/144923928/>.

<sup>24</sup> *Excel Crop Care Limited v. Competition Commission of India*. <https://indiankanon.org/doc/110620615/>.

information that facilitated the coordinated actions of the cartel.<sup>25</sup> The CCI made clear that while there are legitimate purposes for trade associations, they can facilitate cartel behaviour when they allow companies to:

- a. Share sensitive commercial data concerning each company's prices
- b. Make decisions in a coordinated manner; and<sup>26</sup>
- c. Monitor each other to ensure compliance with cartel behaviour.

The tyre case represents a major step forward in changing the way the CCI enforces the Competition Act from focusing on the specific behaviour of an individual company to examining the manner in which institutions can facilitate collusion. From an economic perspective, trade associations reduce uncertainty in oligopolistic markets and lead to a greater level of stability and predictability for colluding firms, which is consistent with the repeated game theory models.<sup>27</sup>

The case makes it clear that the CCI must regulate the manner in which information can be shared amongst companies and not just punish the end result of the illegal activity.<sup>28</sup> However, the challenge for the CCI in enforcing this will be the need for detailed analysis of the distinction between legitimate collaborative behaviour and coordinated behaviour that is anti-competitive.

### 4.3 Pharmaceutical Cartel Cases: Cartelization in Essential Goods Markets

The pharmaceutical sector suffers from cartel-like behavior, which has significant social and economic implications since the public's health and access to essential medicines is directly affected by such behavior. Bid-rigging and market allocation have been found in the context of procurement created by hospitals and government departments.<sup>29</sup> The difference between

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<sup>25</sup> Competition Commission of India, *In Re: Tyre Manufacturers (Suo Motu Case No. 03 of 2014)*. <https://www.cci.gov.in/sites/default/files/03-of-2014.pdf>.

<sup>26</sup> Richard Whish & David Bailey, *Competition Law* (9th ed., Oxford University Press).

<sup>27</sup> Jean Tirole, *The Theory of Industrial Organization* (MIT Press, 1988).

<sup>28</sup> OECD, *Information Exchanges Between Competitors under Competition Law*. <https://www.oecd.org/competition/cartels/48379006.pdf>.

<sup>29</sup> Competition Commission of India, *Case: In Re: Alleged Cartelisation in Supply of Medicines to Government Hospitals*. <https://www.cci.gov.in/sites/default/files/Case%20No.%2030%20of%202011.pdf>.

typical cartels and cases herein lies primarily in how cartel activity has manifested:

- a. Collusion at the distribution level
- b. Manipulation through the tender process
- c. Exclusionary practices by trade associations.<sup>30</sup>

The economic and social implications are extremely severe since cartelisation in this area results in artificially inflated costs of drugs and limited access to health-care services.

These cases demonstrate why cartel enforcement cannot only be considered with an economic perspective; they also require significant consideration of the public's interest, which may have to lead to stricter enforcement or higher penalties.<sup>31</sup> However, due to the many fragmented supply chains and various local market structures, enforcement is much more complicated.

#### 4.4 Enforcement Trends: Evolution of CCI's Approach

The following findings relate to the analysis of historical cartel cases and reveal a substantial change in the way that the Competition Commission of India (CCI) has approached and defined cartel behaviour through evolving and refined strategic enforcement frameworks. The CCI has moved from relying solely on traditional legal principles when defining, detecting and determining contraventions of Indian anti-competition legislation to utilizing economic analysis and understanding the entire market dynamics surrounding collusive conduct.

- i. **More Use of Economic and Circumstantial Evidence:** The CCI now utilizes more advanced economic analysis and “plus-factors” to assist in detecting and determining cartel behaviour, since it is often quite difficult to find direct evidence of collusion due to its secretive nature.
- ii. **Expanded Liability Against Other Entities:** The CCI has broadened its focus from purely prosecuting cartel membership firms to include targeted enforcement against other third-party entities that facilitate collusion (e.g., trade associations) and are

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<sup>30</sup> Competition Commission of India, *All India Organisation of Chemists and Druggists (AIOCD) Cases*. <https://www.cci.gov.in/sites/default/files/Case%20No.%2020%20of%202011.pdf>.

<sup>31</sup> UNCTAD, *Competition Issues in the Pharmaceutical Sector*. [https://unctad.org/system/files/official-document/ditccp2017d2\\_en.pdf](https://unctad.org/system/files/official-document/ditccp2017d2_en.pdf).

instrumental in providing a vehicle for the simultaneous exchange of information and coordinating conduct.<sup>32</sup>

- iii. **More Use of Leniency Programmes:** The CCI has sought to create a robust leniency programme that serves as a prime detection tool in encouraging present and prior cartel members to disclose their collusive conduct; however, this programme is currently limited with respect to the extent of its effectiveness due to a lack of familiarity and confidence in its operation.<sup>33</sup>
- iv. **More Focus on Sectors Prone to Cartels:** The CCI has developed a risk-based approach to create greater efficiencies and effectiveness in delivering enforcement action, whereby it has concentrated its enforcement against sectors with a high propensity for cartel formation e.g., cement, pharmaceuticals, automobiles.

While there has been some improvement, the enforcement of cartel law in India is still limited by structural and procedural challenges. For instance, high evidential thresholds restrict the ability to use economic inference, while courts' lengthy timescales delay the imposition of penalties, making them less likely to deter further conduct.<sup>34</sup> In some instances, the penalties imposed on members of a cartel do not exceed what they would make from participating in that cartel; therefore, these types of penalties do not act as a disincentive to future participation in cartel behaviour. Finally, the fact that cartels operate in secrecy and are able to adapt themselves creates difficulties for the enforcement of cartel laws. Theoretical models show that repeated interactions and mutual monitoring between members of a cartel increase the likelihood that all members will remain committed to collusive behaviour; therefore, enforcers must disrupt the incentives for collusion and not just impose penalties to achieve effective enforcement.<sup>35</sup>

Evidence from the case studies shows that while CCI has made great strides in creating a strong enforcement structure, cartels continue to exist, which implies that the enforcement is predominantly reactive and not proactive. In order to enhance the effectiveness of the

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<sup>32</sup> CCI, *In Re: Aluminium Phosphide Tablets Manufacturers Case* (2012).  
<https://www.cci.gov.in/sites/default/files/092012.pdf>.

<sup>33</sup> CCI, *Lesser Penalty Regulations, 2009 (as amended)*.  
<https://www.cci.gov.in/sites/default/files/LesserPenalty.pdf>.

<sup>34</sup> NCLAT, *Excel Crop Care Ltd. v. CCI* (2017) (on penalty and evidentiary standards).  
<https://indiankanoon.org/doc/187998913/>.

<sup>35</sup> Jean Tirole, *The Theory of Industrial Organization* (MIT Press, 1988).

enforcement of cartel laws, three areas need to be significantly improved: substantive evidentiary requirements, institutional capacity issues, and better coordination with foreign competition authorities.<sup>36</sup> Ultimately, successful enforcement against cartel behaviour will depend on the ability of the institution to detect, deter, or disrupt collusive activity within complex market structures and is not solely based on the legal provisions of cartel law.

## 5. Critical Analysis, Key Findings And Policy Recommendations

The path of enforcement by the Competition Commission of India (CCI) demonstrates a rapidly growing, but developing and transitioning, approach to addressing cartel behaviour within India. An analysis of the CCI's functioning, alongside judgements and theory, has demonstrated ample successes and many remaining structural challenges.

From an enforcement perspective, the CCI is making substantial gains in its ability to detect and penalize cartel behavior. Through landmark judgements within particular industries e.g., Cement, Tyres, the approach taken by the Commission has begun to increasingly rely upon both economic and circumstantial forms of evidence e.g., parallel pricing, production patterns, and conduct within markets. This evidence-based approach supports expanding reliance upon economic tools of enforcement, which moves the CCI towards more sophisticated enforcement mechanisms consistent with many jurisdictions worldwide where direct evidence of cartel conduct does not exist.

However, this reliance upon circumstantial forms of evidence creates a major challenge. Because circumstantial evidence can frequently be challenged during appeals, many appellate decisions reflect an inconsistency, and, in some cases, a lessening of the penalties given at the enforcement stage. This issue highlights a much broader challenge of cartel enforcement — that is, the fundamental secrecy associated with collusive arrangements, as articulated through game theory, where competitors strategically attempt to hide cooperation from detection.

A delay in judicial procedures is a further serious problem. The CCI may impose significant penalties on companies that engage in anti-competitive behaviour, but the long duration of appeals to NCLAT and the higher courts will create a strong diminution of the CCI's deterrent effect. From an economic perspective, delays in enforcement result in a lower expected cost of

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<sup>36</sup> UNCTAD, *Challenges in Competition Law Enforcement in Developing Economies*.  
[https://unctad.org/system/files/official-document/ditclp2019d2\\_en.pdf](https://unctad.org/system/files/official-document/ditclp2019d2_en.pdf).

collusion and thus a reduced deterrent effect on anti-competitive behaviour.

Institutional constraints also limit the effectiveness of the CCI. The CCI has recently expanded its mandate to include more complex investigations; however, the organisation continues to have limited capacity and resources, particularly in addressing data-intensive investigations. The traditional tools of investigation may not be sufficient to detect anti-competitive behaviour in a world of digital markets and algorithm-based pricing.

Analysis also shows that trade associations regularly play the role of facilitating cartelisation by providing a venue for the exchange of information and coordinating behaviour between companies. This calls for an increased level of scrutiny of trade associations and their activities.

In addition, the CCI's leniency programme has become a vital tool for detecting cartels. By providing an incentive to whistle-blowers, this programme reduces the effects of the information asymmetry associated with cartel investigations. However, the effectiveness of the programme has been limited by a lack of awareness of its existence, concerns about confidentiality, and concerns about the lack of procedural transparency.

## **5.1 Key Findings**

The analysis highlights several significant issues in relation to the Competition Act (2002) and its enforcement. Although there is a solid legal basis, there are still challenges with proving collusion in practice. For example, the Competition Commission of India has made significant use of quantitative and qualitative methods for identifying cartels; however, the complexities associated with collecting indirect or circumstantial evidence can be monumental. Therefore, the overall deterrence effect of penalties may be weakened due to delays in securing judges' decisions, and thus, penalties can be deemed as ineffective. In addition, the leniency program continues to be an excellent tool for discovering cartels, but has not received enough use. Finally, as trade associations are regularly involved in encouraging collusive behaviour, more regulatory oversight may be required.

## **5.2 Policy Recommendations**

- i. Enhancing Law Enforcement's Ability To Investigate:** The CCI will have greater success detecting cartels when it adopts more advanced technology e.g., artificial intelligence & data analysis, such as digital forensics to detect cartel characteristics.

- ii. **Reform to Standards Of Evidence:** CCI should establish different criteria on how they weigh the use of circumstantial evidence to establish uniformity i.e., lessen uncertainty and increase their ability to enforce.
- iii. **Leniency Programme Changes:** There is an opportunity to increase the effectiveness of CCI's leniency programme through various strategies (e.g., increase the number of incentives offered, have stricter confidentiality requirements, & increase the outreach efforts to educate businesses about the leniency programme).
- iv. **Minimise Judicial Delays:** The CCI can enforce more quickly and thus prevent or deter future cartel members through the use of time-limited appeals and "fast-track" mechanisms to resolve appeals within a short time period.
- v. **Regulating Trade Associations:** Increased oversight of trade associations will help regulators prevent trade associations from assisting or promoting collusion.
- vi. **Capacity Building of Institutions:** By adding personnel support, developing technical knowledge, and creating international partnerships, CCI will have more power to disrupt 'complex' or international cartels.

## **6. Conclusion**

One of the most dangerous threats to competition in markets is cartelization because it works in secret and causes severe damage to consumers, market efficiency and economic development. This paper has analysed in detail the practice of the Competition Commission of India (CCI) to combat anti-competitive behaviour, using a legal and economic framework for the analysis of its enforcement practices.

The results of the analysis show that CCI has made good strides towards developing a credible competition enforcement structure in India. Through proactive investigations, landmark rulings and the introduction of economic tools, CCI has enhanced the detection and deterrent capability for cartel behaviour. The introduction of leniency programmes and more frequent use of circumstantial evidence are both an indication of CCI's evolving and responsive enforcement strategies consistent with worldwide best practices.

However, there are structural and procedural limitations that impede effective cartel

enforcement. Ongoing challenges, such as ambiguity with respect to the evidence required, delays in the judicial process, limited institutional capacity, and the increasing complexity of modern day cartels, undermine the deterrent effect of regulatory enforcement action. The gap between the Commission's enforcement at the first instance and the determination of the appeal's final judgment further erodes the overall credibility of the enforcement regime.

In addition to the above, the ongoing existence of cartelization in some important industries shows that legal prohibition cannot stop these activities without having effective enforcement mechanisms and institutional strength. The results of this research indicate that competition law enforcement in India will not only depend on stronger laws but will also require effective use of technology, procedural efficiency, and economic expertise in regulatory practice.

As stated throughout this report, while the CCI has become a key part of the competition law system in India, developing a sustainable response to cartelization requires the CCI to adapt to new complexities arising from changing markets. The following areas must be developed in order for the CCI to improve its ability to deter this behaviour: improving its investigative capabilities and ensuring that it has sufficient resources for timely adjudication of matters; developing a culture of compliance within both businesses and regulatory bodies; and implementing a robust enforcement authority to address conduct that has the potential to harm consumers and businesses. Developing these three areas will lead to reduced levels of cartelization and more transparent, innovative and competitive markets in India.