FROM CONFESSION TO DETECTION: RETHINKING INDIA'S LENIENCY REGIME AND THE FUTURE OF CARTEL DETECTION

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ABSTRACT

Cartels pose a unique enforcement challenge because they are designed to operate in secrecy, making detection, rather than prohibition, the central difficulty for competition authorities. This paper examines India's leniency regime under Section 46 of the Competition Act, 2002, and its recent evolution into "leniency plus" through the Competition (Amendment) Act, 2023 and the Competition Commission of India (Lesser Penalty) Regulations, 2024. Tracing the statutory framework governing cartels, the paper analyses key CCI decisions to show how the leniency mechanism has developed in practice, and situates this evolution within a comparative study of the United States and European Union models. The paper then critically evaluates the leniency plus regime against the standards of deterrence, predictability, and institutional capacity, identifying persistent weaknesses in penalty credibility, definitional clarity, confidentiality protection, and personal liability. It concludes with targeted suggestions, including clearer guidelines, stronger confidentiality safeguards, and dedicated whistleblower protection to make voluntary disclosure a genuinely rational strategy for cartel participants in India.

I. Introduction

Cartels are widely regarded as the most serious form of anti-competitive conduct because they replace genuine competition with deliberate coordination between rivals. When competing firms agree, openly or tacitly, to fix prices, limit supply, divide markets, or rig bids, consumers lose the very benefits that competition is meant to deliver; lower prices, better quality, and greater choice. What makes cartels especially harmful is also what makes them hard to stop, that they are secret by design. Participants rarely leave behind direct evidence of collusion, and enforcement authorities are often left piecing together circumstantial signals long after the harm has occurred.

Indian competition law recognises this threat squarely. The Competition Act, 2002 defines and prohibits cartel conduct under Sections 2(b), 2(c), and 3(3), and empowers the Competition Commission of India ("CCI") to impose substantial penalties under Section 27. Yet, as this paper argues, statutory prohibition and penalty alone cannot solve the detection problem. Because cartels are designed to stay hidden, effective enforcement depends as much on uncovering collusion as on punishing it and this is precisely the gap that the leniency regime is meant to fill.

Since 2009, India's leniency framework under Section 46 has offered cartel participants a reduced penalty in exchange for voluntary disclosure and cooperation. This mechanism has evolved considerably, most recently through the Competition (Amendment) Act, 2023 and the Competition Commission of India (Lesser Penalty) Regulations, 2024, which introduced "leniency plus", a further incentive for an existing applicant to disclose an entirely separate, previously unknown cartel. The reform reflects a deliberate attempt to bring India's enforcement architecture closer to mature regimes such as the United States and the European Union, where leniency has become the single most effective tool for cartel detection.

This paper examines whether India's leniency framework, and leniency plus in particular, is capable of achieving the same result. It begins by tracing the statutory treatment of cartels under the Competition Act, before examining the evolution of the leniency regime through key CCI decisions. It then situates the Indian framework within a comparative context, drawing lessons from the US and EU experience. The paper's central contribution lies in its critical analysis of leniency plus, testing its design against the requirements of deterrence, predictability, and institutional capacity, and identifying the specific challenges of ambiguous standards, confidentiality gaps, and weak personal liability that continue to limit its effectiveness. The paper concludes with concrete suggestions aimed at making voluntary disclosure a genuinely rational choice for cartel participants in India.

II. Cartels under the Competition Act, 2002

Cartels represent one of the most serious forms of anti-competitive conduct because they replace genuine competition with deliberate coordination between market participants. A cartel generally arises when competitors reach an understanding, whether explicit or tacit, to manipulate the competitive process for their collective benefit. Instead of independently determining prices, quantities, markets or bidding strategies, competing enterprises coordinate their conduct in a manner that enables them to extract greater profits while limiting the choices available to consumers and other market participants. The secretive nature of such arrangements makes them particularly difficult for competition authorities to detect, investigate and prove. It is this combination of substantial market harm and evidentiary difficulty that makes the leniency regime an important component of cartel enforcement.

The starting point for identifying cartel conduct is the concept of an "agreement" under Section 2(b) of the Competition Act, 2002.[1] The provision adopts an intentionally expansive definition, covering an "arrangement, understanding or action in concert". An agreement, therefore, does not necessarily require a formally executed contract or a written document recording the parties intentions. The law is concerned with the substance of coordination rather than its form. Consequently, an understanding between competitors may be established even where the parties have not expressly documented their arrangement and, depending upon the circumstances, coordinated conduct may be inferred from indirect or non-verbal forms of communication.

This broad conception is particularly significant in cartel investigations. Cartelists are unlikely to leave behind straightforward evidence stating that they have agreed to fix prices or divide markets. Their coordination may instead emerge from a pattern of communications, conduct, meetings, exchanges of information or other circumstances indicating concerted action. The breadth of Section 2(b) consequently enables the competition regime to address arrangements that seek to evade liability merely because they lack the appearance of a formal agreement.

[1] The Competition Act, No. 12 of 2003, INDIA CODE (2003), § 2(b).

Section 2(c) of the Competition Act, 2002 defines a cartel to be an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution sale or price of, or trade in goods or provision of services.[2] Section 3(3) specifically addresses horizontal agreements between competitors and identifies four principal forms of cartel conduct.[3] These include agreements that:

1. directly or indirectly determine or fix prices;
2. limit or control production, supply, markets, technical development or investment;
3. divide or allocate markets or customers; and
4. directly or indirectly result in bid rigging or collusive bidding.

These forms of conduct are particularly harmful because they interfere with the fundamental mechanisms through which competition operates.

Section 3(3) adopts a distinct approach towards the agreements falling within its scope. Such agreements are presumed to have an Appreciable Adverse Effect on Competition (AAEC). The rationale is that certain forms of coordination between competitors are inherently capable of undermining the competitive process to such a significant degree that the law begins with a presumption of harm.

The presumption, however, does not mean that every horizontal arrangement is automatically beyond scrutiny or that the parties are deprived of an opportunity to contest the allegation. The presumption may be rebutted, with the burden resting on the party seeking to demonstrate why the agreement should not be treated as producing the presumed anti-competitive effect. In theory, parties may rely upon arguments concerning the beneficial or efficiency-enhancing consequences of their conduct. In practice, however, rebutting the presumption becomes considerably more difficult where the arrangement constitutes a conventional cartel involving price fixing, market allocation or bid rigging.

The reason is straightforward: cartel arrangements are ordinarily designed to suppress the

[2] *Id.* § 2(c).
[3] *Id.* § 3(3).

competitive forces that would otherwise constrain the participating enterprises. The greater the degree of coordination among competitors, the more difficult it becomes to establish that the arrangement produces sufficient benefits to outweigh its restrictive consequences.

Among the different forms of cartel conduct, price fixing is perhaps the most direct. Competitors may agree to charge a predetermined price or otherwise coordinate pricing strategies rather than independently responding to market conditions. Such conduct deprives consumers of the benefits that normally arise when firms compete on price.

A second form is restriction of supply or production. Competitors may deliberately limit the quantity of goods or services available in the market with the objective of creating scarcity and maintaining higher prices. The competitive harm arises because output is artificially constrained rather than being determined by ordinary market forces.

The third form is market or customer allocation. Competitors may divide territories, customer groups or categories of business between themselves. Instead of competing for the same customers, each participant effectively receives an agreed portion of the market. Such arrangements can be particularly damaging because consumers may have little or no opportunity to switch to a competing supplier.

The fourth and particularly significant form is bid rigging, also referred to as collusive bidding. Bid rigging occurs where firms coordinate their responses to procurement processes instead of submitting bids independently. The objective may be to determine in advance which participant will win the contract while creating an appearance of competitive bidding.

Bid rigging can take several forms, including cover bidding, bid suppression, bid rotation, market allocation and coordinated pricing. For instance, under bid rotation, competitors may agree that different firms will take turns winning procurement contracts. Under cover bidding, certain participants submit deliberately unattractive bids so that a pre-selected bidder can win. In bid suppression, competitors agree not to submit bids at all. These practices undermine the integrity of procurement processes and can cause substantial financial harm to public authorities and private purchasers.

The CCI's approach to cartelisation has developed considerably over time. In its first cartel decision in 2011 in *FICCI-Multiplex Association of India v. United Producers/Distributor*

Forum,[4] CCI examined coordinated action by groups of Hindi film producers who directed members to withhold film releases in an effort to obtain more favourable revenue-sharing arrangements from multiplex operators. The CCI imposed a nominal penalty of ₹1 lakh on each producer association, taking into account that the boycott had commenced before the relevant anti-cartel provisions became enforceable.

The scale of subsequent cartel penalties demonstrates the increasing seriousness with which such conduct has been treated. In the cement cartel proceedings, for example, the CCI imposed substantial penalties on major cement manufacturers for coordinated conduct. The case illustrates the potentially significant financial consequences associated with cartelisation and the importance of effective deterrence.

Section 27 provides the CCI with a range of remedies once a contravention of Section 3 or Section 4 has been established. These include directing the concerned enterprise or association to discontinue the offending conduct and refrain from re-entering into the agreement, imposing monetary penalties, requiring modification of an agreement and issuing other appropriate directions. For cartel conduct specifically, the penalty provision is particularly stringent. Section 27(b) permits the CCI, subject to the statutory framework, to impose a penalty of up to three times the profit of the enterprise for each year of the continuance of the cartel or ten per cent of its turnover for each year of such continuance, whichever is higher. The ordinary penalty ceiling is up to ten per cent of the average turnover for the preceding three financial years.[5]

The Supreme Court's decision in *Excel Crop Care Ltd. v. CCI* significantly influenced the manner in which monetary penalties are calculated. Prior to this decision, penalties could be calculated by reference to the total turnover of an enterprise. The Supreme Court, however, emphasised proportionality and held that the relevant turnover, rather than the enterprise's entire turnover, should form the basis of the penalty calculation in the circumstances addressed by the Court.[6]

The significance of this approach lies in ensuring that the penalty remains connected to the

[4] FICCI-Multiplex Association of India vs. United Producers /Distributor Forum and Others., Case No.1 of 2009.
[5] The Competition Act, No. 12 of 2003, INDIA CODE (2003), § 27(b).
[6] Excel Crop Care Ltd. v. CCI, (2017) 8 SCC 47.

economic activity affected by the infringement. A company operating across several unrelated markets should not necessarily face a penalty calculated on business activities having no connection with the anti-competitive conduct. The decision consequently introduced greater emphasis on proportionality in the application of Section 27(b).

At the same time, the purpose of penalties remains fundamentally deterrent. As recognised in *Excel Crop Care*, penalties are intended not merely to punish the infringing enterprise but also to discourage both the offender and other market participants from engaging in similar conduct. Competition proceedings are administrative in nature and do not ordinarily require proof beyond reasonable doubt, as would be expected in a criminal prosecution. The evidentiary approach adopted in cartel cases has developed over time, with references to standards such as the "balance of probabilities", "preponderance of probabilities" and "strong probability".

This lower evidentiary threshold reflects the nature of competition proceedings, but it does not eliminate the practical difficulty of proving a cartel. Cartels are generally clandestine arrangements. Participants have strong incentives to conceal communications and avoid leaving direct evidence of their coordination. As a result, competition authorities may have to construct a case from circumstantial evidence, patterns of behaviour and communications between participants. This inherent difficulty explains why deterrence through penalties, although important, cannot by itself provide an effective enforcement strategy. The law must also create incentives for cartel participants to disclose information from within the cartel itself.

The effectiveness of a leniency regime is closely connected to the credibility of the penalty framework. A cartel member is more likely to approach the competition authority voluntarily when it faces a genuine risk of substantial punishment if the cartel is discovered. In this sense, penalties and leniency operate together rather than independently.

A credible enforcement model therefore requires two competing incentives. On one side is the threat of punishment: remaining in the cartel exposes the participant to potentially severe financial consequences. On the other is the reward for cooperation: the participant that comes forward first and provides valuable evidence may receive immunity or a substantial reduction in penalty. The objective is ultimately to destabilise the cartel from within. If each participant knows that another member may approach the CCI first and secure leniency, the cartel becomes inherently unstable. The risk of being betrayed by a fellow participant can itself deter firms from entering into or continuing cartel arrangements.

Thus, the penalty framework under Section 27 is not merely a mechanism for imposing financial consequences after a cartel has been established. It forms an essential part of the broader enforcement architecture within which the leniency regime operates. Severe and credible sanctions create the fear of detection and punishment, while leniency provides the incentive to cooperate. Together, they enable competition authorities to uncover conduct that would otherwise remain hidden and strengthen the deterrence of cartelisation.

III. The Leniency Regime in India

The leniency regime creates an incentive for cartel participants to come forward voluntarily, disclose information and assist the competition authority in establishing the contravention. In India, this mechanism is principally anchored in Section 46 of the Competition Act, 2002, which enables the Competition Commission of India ("CCI") to grant a lesser penalty to an enterprise or person that makes a disclosure regarding a cartel prohibited under Section 3 and provides cooperation in the ensuing investigation.[7] The underlying policy is straightforward, the benefit conferred upon the whistleblower is intended to generate information that the CCI may otherwise find difficult to obtain. To operationalise Section 46, the CCI introduced the Competition Commission of India (Lesser Penalty) Regulations, 2009 ("LPR 2009").[8] An applicant who makes a disclosure before its fellow cartel members may secure the greatest benefit, while subsequent applicants may also obtain a reduction where their disclosures provide additional value to the evidence already available with the CCI.

The importance of timing in a leniency application became apparent in the first matter in which the mechanism was invoked, *In Re: Cartelization in respect of tenders floated by Indian Railways for supply of Brushless DC Fans and other electrical items*.[9] M/s Pyramid Electricals was the first and only enterprise to submit a leniency application and disclosed information concerning a bid-rigging cartel. Despite being the first applicant, however, Pyramid Electricals did not receive a complete waiver. The principal reason was that the disclosure was made after the Director General ("DG") had already commenced its investigation and the information supplied by the applicant had not formed the basis for initiating that investigation. Hence, the timing of the disclosure and the evidentiary value of the information supplied are central to

[7] The Competition Act, No. 12 of 2003, INDIA CODE (2003), § 46.

[8] Competition Commission of India (Lesser Penalty) Regulations, 2009, GAZETTE OF INDIA, pt. III sec. 4 (Aug. 13, 2009).

[9] *In Re: Cartelization in Respect of Tenders Floated by Indian Railways for Supply of Brushless DC Fans and Other Electrical Items*, Suo Moto Case No. 03 of 2014 (CCI Jan. 18, 2017).

determining the benefit available to an applicant.

A contrasting approach can be seen in the Dry Cell Manufacturers case,[10] where Panasonic received a full waiver of penalty after making the relevant disclosure, while subsequent applicants, Nippo and Eveready, obtained only partial reductions. Their disclosures did not add sufficient value to the material already provided by Panasonic. It shows that significant and previously unavailable information provided by an applicant can help in greater potential reduction.

The framework underwent a significant change through the 2017 amendment to the lesser penalty regulations. Prior to the amendment, the number of applicants capable of receiving a waiver was restricted to three. The amendment removed this numerical limitation and permitted all applicants satisfying the prescribed requirements to obtain a waiver where their disclosures contained essential information that had not already been provided by another applicant. At the same time, the expanded framework raised concerns regarding confidentiality. The DG, subject to the approval of the CCI, possesses a degree of discretion to disclose information supplied by an applicant in circumstances contemplated by the regulations. The possibility of unilateral disclosure may create uncertainty for potential applicants, particularly where disclosure could expose them to consequences beyond the competition proceedings. Since confidentiality is central to encouraging whistleblowing, excessive uncertainty regarding the treatment of information may discourage potential applicants from making voluntary disclosures.

The Indian leniency framework was further transformed by the Competition (Amendment) Act, 2023, which introduced the concept of 'leniency plus' or 'lesser penalty plus'.[11] The mechanism was subsequently implemented through the Competition Commission of India (Lesser Penalty) Regulations, 2024 ("LPR 2024"), which replaced the LPR 2009.[12] The leniency/lesser penalty regime rewards an applicant for making a qualifying disclosure concerning a single cartel. Leniency plus/lesser penalty plus, on the other hand, creates an additional incentive for an existing leniency applicant to disclose a second cartel that is not known to the CCI.

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[10] *In Re: Cartelisation in Respect of Zinc Carbon Dry Cell Batteries Market in India*, Suo Motu Case No. 02 of 2016 (CCI Apr. 19, 2018).
[11] The Competition (Amendment) Act, No. 9 of 2023, INDIA CODE (2023).
[12] Competition Commission of India (Lesser Penalty) Regulations, 2024, GAZETTE OF INDIA, pt. III sec.4 (Feb. 20, 2024).

Under Regulation 5 of the LPR 2024,[13] an existing leniency applicant that has already made a full, true and vital disclosure regarding a first cartel may receive an additional reduction in penalty of up to 30% in relation to the first cartel if it makes a full, true and vital disclosure concerning a second cartel unknown to the CCI. In relation to the second cartel, the applicant may receive a reduction of up to 100%.

Under Regulation 4 of the LPR 2024,[14] the first applicant may receive a reduction of up to 100% where its disclosure enables the CCI to form a *prima facie* opinion regarding the existence of a cartel and, at the time of disclosure, the CCI did not possess sufficient evidence to form such an opinion. A similar benefit may be available where the matter is already under investigation but the CCI or DG does not possess sufficient evidence to establish the contravention of Section 3(3). For subsequent applicants, the benefit depends upon the extent to which their disclosures strengthen the existing evidentiary record. The second applicant may receive up to 50% reduction, while the third applicant may receive up to 30% reduction, provided the disclosure and evidence submitted add value to the material already available with the CCI or DG.

Leniency is not an unconditional reward for admitting cartel participation. Section 46 read with Regulation 3(1) of the LPR 2024 requires an applicant to satisfy several conditions.[15] The applicant must first cease participation in the cartel at the time of disclosure. It must then provide a full and true disclosure containing information capable of enabling the CCI to form a *prima facie opinion* regarding the alleged contravention. The applicant must also provide all relevant information, documents and evidence sought by the CCI and must cooperate genuinely, fully, continuously and expeditiously throughout the investigation and subsequent proceedings. Further, the applicant cannot conceal, destroy, manipulate or remove relevant documents, nor may it provide false evidence or deliberately withhold material information.

IV. Rethinking India’s Leniency Regime: Lessons from the EU and the United States

Unlike India, in jurisdictions such as the United States and the European Union leniency has become an important source of cartel detection. Under the EU framework, an undertaking can obtain complete immunity where its application enables the European Commission to

[13] *Id.* reg. 5.
[14] *Id.* reg. 4.
[15] *Id.* reg. 3(1).

investigate or establish a cartel infringement. Other applicants may receive reductions where they provide evidence that adds significant value to the information already available to the Commission. The reduction is structured according to the applicant's position and the value of its evidence. The first qualifying applicant may receive a reduction of 30–50%, the second 20–30%, and subsequent applicants up to 20%.[16]

The United States provides an even stronger model of deterrence. Its leniency programme operates alongside criminal enforcement of cartel conduct.[17] The United States also employs a "leniency plus" mechanism. This is accompanied by "penalty plus," which operates as the corresponding deterrent where failure to disclose another cartel that is subsequently discovered may result in increased sanctions.[18]

CCI has adopted inconsistent approaches while granting leniency which is a major challenge. For example, in the Brushless DC Fan case,[19] an applicant received a 75% reduction, whereas in the Zinc-Carbon Dry Cell Manufacturers' cartel case,[20] the applicant received a 100% reduction. Where similar conduct produces significantly different outcomes, potential applicants may be uncertain about the benefits of approaching the CCI. Such uncertainty can weaken the central incentive on which leniency programmes depend.

Confidentiality is another important concern. A cartel member considering disclosure must assess not only the penalty it may avoid but also the risks associated with revealing its involvement. The EU framework places considerable importance on protecting the confidentiality of leniency applicants and whistle-blowers[21] In contrast, concerns have been raised in India regarding the disclosure of confidential information and the identity of applicants following the 2017 amendments. Greater protection of applicants could therefore encourage more voluntary disclosures.

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[16] Commission Notice on Immunity from Fines and Reduction of Fines in Cartel Cases, 2006 O.J. (C 298) 17, 17–20 (EC).

[17] Sherman Antitrust Act, 15 U.S.C. § 1 (2018).

[18] U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL (5th ed. 2014), https://www.justice.gov/archives/atr/file/517886/dl?inline=.

[19] *In Re: Cartelization in Respect of Tenders Floated by Indian Railways for Supply of Brushless DC Fans and Other Electrical Items*, Suo Moto Case No. 03 of 2014 (CCI Jan. 18, 2017).

[20] *In Re: Cartelisation in Respect of Zinc Carbon Dry Cell Batteries Market in India*, Suo Motu Case No. 02 of 2016 (CCI Apr. 19, 2018).

[21] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the Protection of Persons Who Report Breaches of Union Law, 2019 O.J. (L 305) 17.

India must also strengthen protection for individual whistle-blowers. Cartels often involve employees and individuals who may possess information that is unavailable to regulators. However, Public Interest Disclosure and Protection of Informer Resolution, 2004, has a limited scope and does not provide comprehensive protection to employees of private enterprises.[22] Although the lesser penalty framework can provide immunity from competition-law penalties, this does not necessarily protect an individual from employment-related retaliation or other consequences.

Ultimately, the effectiveness of a leniency programme depends on whether cartel members believe that disclosure is both beneficial. India should establish clearer and more consistent standards for granting immunity and reductions, strengthen confidentiality, introduce meaningful whistle-blower protection, and consider carefully structured leniency plus.

V. Critical Analysis: Effectiveness and Challenges

The introduction of the leniency plus mechanism through Section 46(4) of the Competition Act, 2002, inserted by the Competition (Amendment) Act, 2023, and operationalised by the Competition Commission of India (Lesser Penalty) Regulations, 2024, was projected as a modernisation of India's cartel-detection architecture.[23] Having examined the descriptive contours of this regime in the preceding chapters, this chapter undertakes a critical analysis of the leniency plus mechanism by testing its design, feasibility, and doctrinal coherence against the parameters of predictability, deterrence, and enforceability that any effective leniency programme must satisfy. While the amendment is a welcome legislative gesture, it inherits the structural weaknesses that have long constrained the ordinary leniency regime in India since 2009.

Deterrence deficit: insufficient threat and reward

As cartels are secret agreements, detecting them has proven to be difficult. Therefore, an effective competition law regime must ensure that the expected cost of participating in a cartel is sufficiently high to discourage firms from engaging in such conduct.[24]

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[22] Public Interest Disclosure and Protection of Informers Resolution, GAZETTE OF INDIA, pt. I sec. 1 (Apr. 21, 2004).

[23] The Competition (Amendment) Act, 2023, No. 9 of 2023, INDIA CODE (2023), § 26; The Competition Commission of India (Lesser Penalty) Regulations, 2024, GAZETTE OF INDIA, pt. III sec. 4 (Feb. 20, 2024).

[24] Aditya Bhattacharjea, *Cartel Penalties in India: Dilution, Delays, and Diminished Deterrence*, 9 INDIAN

The economic theory of deterrence establishes that firms would comply with competition law when the expected cost of violating the law is greater than the benefit it expects to obtain from the violation. In the context of cartels, the expected cost depends not only on the amount of the penalty but also on the probability of detection and the time taken to actually recover the penalty. If the probability of detection is low, the penalty must be sufficiently high to outweigh the profits earned through collusion.

Thus, leniency succeeds only when confessing beats staying silent. In India, low fines and rare enforcement give firms little reason to fear detection, while vague standards like "significant value" leave the reward for confessing uncertain. Together, weak threats and unpredictable rewards fail to generate the distrust needed to break cartels apart.

Indian competition law provides significant penalties for cartelisation. Under Section 27(b) of the Competition Act, 2002, the Competition Commission of India (CCI) may impose a penalty of up to three times the profit made by an enterprise from the cartel for each year of its continuance, or ten per cent of the average turnover or income for each year, whichever is higher. On paper, therefore, the law appears capable of imposing substantial penalties. However, the actual deterrent effect of these provisions depends on how the CCI applies them in practice. A review of cartel cases between 2009 and 2021 indicates that the CCI did not impose the maximum penalty available under Section 27(b). The CCI frequently relied on a penalty based on a percentage of the average turnover of the preceding three years, and the percentage imposed was often below the statutory maximum.[4] This creates a gap between the severity of penalties provided by law and the penalties actually imposed.

Specifically, since the credibility of any leniency programme is contingent on the credibility of the underlying penalty regime, the "discount" offered by leniency is only as meaningful as the baseline penalty from which it is subtracted. Here, the Supreme Court's landmark ruling in Excel Crop Care Ltd. v. Competition Commission of India is instructive. The Court held that penalties under Section 27(b) of the Act must be computed on the "relevant turnover" attributable to the infringing product or service, rather than the total turnover of a multi-product enterprise, in the interest of proportionality. While doctrinally sound, this ruling has the incidental effect of substantially lowering the absolute quantum of penalties actually realised in cartel cases, which in turn narrows the monetary benefit that leniency and leniency plus can

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meaningfully offer.[25] If the baseline penalty exposure is already modest owing to the relevant-turnover principle, the marginal value of an "additional 30% reduction" under leniency plus diminishes correspondingly, weakening the incentive at the very moment the legislature sought to strengthen it. Separately, appellate scrutiny of leniency orders, such as the National Company Law Appellate Tribunal's 2022 remand of the CCI's penalty order in the Pune Municipal Corporation waste-processing bid-rigging matter for want of a reasoned basis for differential leniency-linked penalty reductions illustrates the recurring institutional weakness of inadequately reasoned quantification, a defect leniency plus does not resolve and may in fact multiply given its two-tier reduction structure.[26]

Additionally, the theoretical foundation of leniency plus, as conceived in mature jurisdictions such as the United States, rests on a dual incentive structure: a "carrot" in the form of penalty reduction, and a "stick" in the form of credible criminal exposure for cartel participants who do not come forward.[27] The US Department of Justice's Amnesty Plus policy functions effectively precisely because non-disclosure carries the risk of individual criminal prosecution under the Sherman Act.[28] India's competition law regime, by contrast, remains fundamentally administrative and civil in character. Violations of Section 3 attract monetary penalties on enterprises and, at most, proportionate penalties on individuals in control of the enterprise, but no custodial consequence.[29] Therefore, transplanting a leniency plus design conceived for a criminal-deterrence ecosystem onto a civil-penalty framework dilutes its logic: an entity already embroiled in one cartel investigation has comparatively little additional reason to expose itself in an unrelated market, since the "stick" of criminal liability that disciplines cartelists in the United States, Brazil, or Canada is simply absent in India.[30] The result is that leniency plus operates as a pure inducement mechanism rather than a genuinely deterrence-reinforcing tool, raising doubts about whether it can meaningfully alter the risk calculus of a

[25] Shreeja Sen, *Why Supreme Court's Ruling in Excel Crop Case on Relevant Turnover is Problematic*, CCLE (2018), https://www.icle.in/resource/why-supreme-courts-ruling-in-excel-crop-case-on-relevant-turnover-is-problematic/.

[26] Nagrik Chetna Manch v. Fortified Security Solutions, Case No. 50 of 2015, CCI (May 1, 2018).

[27] Massimo Motta & Michele Polo, *Leniency Programs and Cartel Prosecution*, 21 INT'L J. INDUS. ORG. 347, 379 (2003).

[28] U.S. DEP'T OF JUSTICE, ANTITRUST DIV., *Leniency Policy and Procedures* (Mar. 2024), https://www.justice.gov/atr/leniency-policy.; Anjali Baniya, *(Mis)Application of Leniency Plus Programme in India: Probable Problems and Concerns*, CTR. FOR COMPETITION L., NLU ODISHA (2024).

[29] The Competition (Amendment) Act, 2023, No. 9 of 2023, INDIA CODE (2023), § 27, 48.

[30] *Leniency Plus: A Need for Introspection in the Indian Context*, CTR. FOR BUS. & FIN. L., NLU DELHI (2023).

rational cartelist.

Ambiguity in definition

A second and closely related concern is the imprecision of the statutory and regulatory vocabulary that governs eligibility for leniency plus benefits. Regulation 5 of the 2024 Regulations conditions the grant of reduction upon a "full, true and vital" disclosure that adds "significant value" to the information already available with the Commission or the Director General.[31] Neither vital disclosure nor significant value is defined with any precision, leaving the CCI considerable discretion in determining whether a disclosure crosses the qualifying threshold.[32] Specifically, in the Brushless DC Fans case, the CCI granted only a 75% reduction to the sole applicant despite acknowledging that the disclosure added significant value to establishing the cartel, without articulating a transparent methodology for arriving at that figure rather than a full waiver.[33] Similarly, in the beer cartel proceedings arising out of the leniency application filed by Anheuser Busch InBev, the CCI granted differentiated reductions of 100%, 40%, and 20% to the three successive applicants, again without disclosing the precise weightage accorded to timing, evidentiary value, and cooperation.[34] The CCI has therefore consistently failed to articulate the mathematical or economic basis underlying specific percentage reductions, a form of opacity that undermines the predictability which is the very currency of an effective leniency system. Potential applicants cannot reliably estimate the benefit of coming forward, which in turn discourages voluntary disclosure.[35] This uncertainty is compounded in the leniency plus context, where an applicant must gauge not only its exposure in the first cartel but also estimate an unknown, discretionary additional reduction of up to 30% for a wholly separate matter. A double layer of unpredictability that arguably weakens rather than strengthens the incentive to disclose.

Weak institutional capacity in effective implementation

The leniency plus mechanism enhances the ordinary lesser-penalty regime that has existed

[31] Competition Commission of India (Lesser Penalty) Regulations, 2024, GAZETTE OF INDIA, pt. III sec. 4, reg. 5 (Feb. 20, 2024).

[32] *Understanding CCI's Leniency Plus Regime for Cartel Disclosures*, FOXMANDAL (Feb. 27, 2024)

[33] *In re* Cartelization in Respect of Tenders Floated by Indian Railways for Supply of Brushless DC Fans and Other Electrical Items, Suo Motu Case No. 03 of 2014, CCI (Jan. 18, 2017).

[34] *In re* Alleged Cartelization in the Beer Market in India, Suo Motu Case No. 06 of 2017, CCI (2021).

[35] *Leniency as a Tool for Cartel Detection in India: A Critical and Comparative Study*, LEGAL SERV. INDIA (2025)

since the Competition Commission of India (Lesser Penalty) Regulations, 2009. However, the Competition Law Review Committee itself acknowledged that the utilisation of the ordinary leniency regime in its first decade of operation remained very low, with only a handful of successful applications materialising into final orders and inconsistency across CCI decisions on the quantum of reduction granted.[36] Building an additional, more complex incentive structure on top of a foundation that has not yet achieved voluntary participation raises questions about whether leniency plus will meaningfully increase overall disclosure rates, or whether it will simply remain underutilised in the same manner.[37]

Cartel cases often remain in litigation for several years because parties challenge CCI orders before appellate courts. During this period, the payment of the penalty may be delayed or reduced on appeal. As a result, the real economic value of the penalty decreases over time. Data cited in the study illustrates this problem: only a small proportion of the penalties imposed by the CCI were actually realised. For example, by March 2023, only ₹177 crore out of ₹1,336 crore imposed during 2021–22 had been realised.[38]

This weakens the effectiveness of the leniency programme. A cartel member is more likely to cooperate with the CCI and disclose information when the expected punishment for remaining in the cartel is substantial and certain. If penalties are perceived as low or delayed, cartel members may have less incentive to report the cartel. This is reinforced by resource constraints within the CCI itself. Each successful leniency plus disclosure necessarily triggers a fresh, independent investigation into a previously unknown cartel, requiring the Director General's office to marshal additional investigative capacity, conduct search-and-seizure operations, and build an evidentiary record largely from scratch.[39] Among the CCI's human and financial resource limitations, it remains a question whether the regulator is institutionally equipped to absorb the additional caseload that a successful leniency plus programme would generate, particularly since most cartel investigations in India already originate from public procurement bid-rigging cases that are resource intensive in their own right.

Therefore, the effectiveness of cartel enforcement cannot be measured merely by looking at

[36] COMPETITION LAW REVIEW COMMITTEE, MINISTRY OF CORPORATE AFFAIRS, REPORT OF THE COMPETITION LAW REVIEW COMMITTEE (2019).
[37] *Leniency Plus: A Need for Introspection in the Indian Context*, *supra* note 30.
[38] COMPETITION COMMISSION OF INDIA, ANNUAL REPORT 2018–19, at 19 (2019).
[39] M.M. Sharma & Ankit Singh Rajput, *CCI Introduces Leniency "Plus" Regime in India—Will It Suffice?*, MONDAQ (Mar. 11, 2024).

the maximum penalty prescribed in the Competition Act. What matters is whether penalties are sufficiently high, imposed promptly, and actually recovered. Stronger deterrence requires quicker proceedings, effective recovery mechanisms, and penalties that reflect the economic gains obtained through cartelisation.

Distrust

A leniency programme succeeds not by appealing to a firm's conscience but by making cartel members distrust one another. Since only the first applicant receives full amnesty, every firm has a reason to suspect that its partners might confess first — and each firm that could receive a meaningful reward for confessing first adds to that suspicion.[6] This mutual distrust is what destabilises cartels from within, often before any investigation even begins.

For this distrust to function, two things must be certain: the punishment for staying silent must be severe, and the reward for coming forward first must be reliable. India's leniency plus regime struggles on both counts. The threat is weak, as discussed above, and the reward is unpredictable because terms like "significant value" and "vital disclosure" are not defined with any precision, leaving firms unsure whether their disclosure will actually be rewarded.[7] When firms cannot be sure they will benefit from confessing, the distrust that ordinarily unravels a cartel simply does not take hold, and cartel members may find it safer to stay silent and stay loyal to one another.

Confidentiality

Furthermore, the 2024 Regulations promise confidentiality of the applicant's identity and the material it submits, subject to the fact that the disclosure may occur where confidentiality is waived, where mandated by law, where the applicant has made a public disclosure, or where the Director General, upon reasoned approval from the CCI, discloses the confidential material to other parties to the proceeding for investigative purposes.[40] This discretionary disclosure power creates a structural tension at the heart of the regime. An enterprise weighing whether to file a leniency plus application must contend with the possibility that its self-incriminating admissions could ultimately reach the very competitors it is confessing against, and, more significantly, could surface in follow-on compensation proceedings under Section 53N of the

[40] Competition Commission of India (Lesser Penalty) Regulations, 2024, GAZETTE OF INDIA, pt. III sec. 4, reg. 8 (Feb. 20, 2024).

Act, where affected parties may seek damages arising from the established cartel conduct.[41] Unlike the European Union, where the Antitrust Damages Directive expressly shields leniency corporate statements from disclosure in civil damages litigation to preserve the integrity of the leniency programme, Indian law contains no equivalent, explicit statutory protection insulating leniency plus admissions from use in private litigation.[42] This creates the consequence that rational enterprises may calculate that the administrative penalty savings offered by leniency plus are outweighed by the litigation exposure created once an admission of cartel conduct becomes discoverable, particularly in high-value markets where further damages could dwarf the penalty itself.

Uncertainty regarding rewards/outcome

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Uncertainty in the priority-based application process

A further, underexplored challenge concerns the risk of strategic manipulation inherent in any multi-cartel disclosure incentive. The 2024 Regulations process leniency plus applications

[41] The Competition Act, No. 12 of 2003, INDIA CODE (2003), § 53N.
[42] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on Certain Rules Governing Actions for Damages Under National Law for Infringements of the Competition Law Provisions of the Member States and of the European Union, art. 6(6), 2014 O.J. (L 349) 1 (protecting leniency statements from disclosure in damages actions).

strictly one at a time, on a first-come-first-served basis. Until the CCI decides the first application, it does not take up any subsequent one, and the Regulations say nothing about whether waiting applicants are even told their claim is on hold. This silence creates real uncertainty: a firm may hesitate to apply, unsure whether it will ever be considered, or may delay filing altogether while waiting for clarity. Meanwhile, the cartel continues operating undisturbed during this waiting period. The mechanism meant to encourage prompt disclosure ends up discouraging the very whistleblowing it was designed to reward. Because the leniency plus benefit is triggered by disclosure of a "second cartel" previously unknown to the CCI, there is an incentive for applicants to fragment, exaggerate, or selectively frame otherwise unified anti-competitive conduct as distinct infringements in order to multiply the reduction opportunities available to them.[43] Equally, the priority-based structure of the regime, under which the CCI will not examine a subsequent applicant's leniency plus claim for a newly disclosed cartel unless the first applicant's claim is rejected, creates pressure for hasty disclosures that may be incomplete or imprecise, undermining the very "full, true and vital" standard the Regulations demand.[44] The regime, in other words, may reward speed of disclosure over the quality and reliability of the evidence disclosed, which must be actively guarded against through verification at the investigation stage.

The risk of procollusive outcomes

Somewhat counter-intuitively, some economists argue that leniency plus can strengthen rather than weaken cartels operating across multiple markets. Lefouili and Roux modelled a scenario involving two cartels of unequal stability run by the same firms, and found that leniency plus can stabilise the weaker cartel by aligning the firms' incentives to keep both running simultaneously rather than defecting from either.[5] Relatedly, firms may adopt a "collude and report" strategy, profiting from a cartel over time and only disclosing it once conviction looks likely, effectively treating leniency as an exit option rather than a genuine deterrent.[6] Bhattacharjea and De's empirical study of CCI penalties found that fines imposed till 2016 were already well below the level needed to offset cartel profits; layering leniency plus reductions on top of already-low penalties risks making this gap wider, not narrower.[7]

[43] Dibyojit Mukherjee, *Lesser Penalty Plus Regulations—A Vital Step to Expose Hidden Cartels*, DBRANLU L. REV. BLOG (2025).
[44] *CCI's Revamped Leniency Regime Goes Live*, VERITAS LEGAL (2024).

Administrative costs of verification

Beyond questions of incentive design, leniency plus imposes a real administrative cost on the CCI. When a firm discloses a second cartel, the Commission cannot simply accept the claim, it must verify that the disclosure meets the "significant value addition" threshold before any reduction can be granted, which in effect means launching a fresh investigation into an entirely new market.[45] This adds a distinct adjudicative step to proceedings that are often already prolonged, straining a regulator that is already short on investigative manpower and resources. If this extra layer of investigation does not lead to a proportionate rise in the number of cartels actually broken, the net effect is simply a slower, costlier enforcement process, a burden on the system without a matching benefit.

Taken together, it is suggested that the leniency plus regime, while conceptually aligned with global best practice, confronts a distinctly Indian set of implementation challenges: the absence of a criminal deterrence multiplier, vague definitions that lead to unpredictability, a weak base-regime foundation, unresolved tension with private damages litigation, proportionality-driven erosion of penalty, and incentives for strategic gaming. None of these challenges is necessarily fatal to the regime's long-term efficacy, but they collectively indicate that the 2024 Regulations represent the beginning, rather than the culmination, of India's leniency-plus experiment.

VI. Plausible Solutions to the Challenges

Having identified the structural and procedural weaknesses of the leniency plus regime, this section turns to possible remedies. The suggestions below draw on comparative practice and on the specific gaps in personal liability, institutional transparency, confidentiality, and procedure identified earlier in this chapter.

Strengthening Personal Liability

A leniency programme works best when it triggers not one but two races to the regulator: the race between rival firms, and a second, less-discussed race between a firm and its own guilty executives.[46] India's regime is built almost entirely around the first race. Individual liability exists on paper, but it is capped at 10% of an individual's average income over the preceding

[45] *Supra* note 36.

[46] Christopher R. Leslie, *Trust, Distrust, and Antitrust*, 82 TEX. L. REV. 515 (2004).

three years, and in practice, companies routinely reimburse their directors for such fines. With nothing personal at stake, an executive who orchestrated a cartel has little reason to break ranks, and without that internal pressure, firms as a whole feel less urgency to apply for leniency in the first place.

Jurisdictions with successful leniency programmes typically solve this through the threat of imprisonment, which creates a race between the firm and its own employees, since the employees have the most to lose.[47] Replicating this in India, however, is not straightforward. Criminalising cartel conduct requires public acceptance of cartels as a serious wrong, along with the institutional capacity to enforce such sanctions consistently and India's limited public awareness of cartel harm and the CCI's resource constraints make immediate criminalisation impractical.[48] A more realistic step would be director disqualification: barring individuals found liable for cartel conduct from holding management positions for a defined period. This approach has worked well in the UK, Ireland, Russia, and New Zealand, since it combines a real financial cost with lasting reputational damage, at a fraction of the institutional cost of criminal enforcement.[5] Combined with individual fines, disqualification could meaningfully raise the personal cost of participating in a cartel but only if applied consistently, since an erratically enforced sanction, however severe on paper, quickly becomes an empty threat.

Building Transparency and Consistency into CCI Practice

A leniency regime only earns the trust of potential applicants if both its threats and its rewards are predictable. At present, the CCI has not published any guidelines explaining how it calculates penalties, and its orders frequently do not spell out the reasoning behind the figure imposed. This lack of clarity is one reason so many CCI penalty orders end up before the NCLAT, where they are often reduced or set aside which is a pattern that further weakens the deterrent value of the underlying fine. The same unpredictability affects the grant of leniency itself: without clear criteria for what qualifies as "cooperation" or "significant value addition," applicants cannot reliably estimate what they stand to gain by coming forward.

The remedy lies in publishing clear, binding guidelines which are both for penalty computation,

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[47] U.S. DEP'T OF JUSTICE, ANTITRUST DIV., *Frequently Asked Questions About the Antitrust Division's Leniency Program* (Jan. 3, 2023), https://www.justice.gov/atr/leniency-program.
[48] Ariel Ezrachi & Johannes Kindl, *Cartels as Criminal? The Long Road from Unilateral Enforcement to International Consensus*, in CRIMINALISING CARTELS (Caron Beaton-Wells & Ariel Ezrachi eds., 2011).

following the model of the US and EU sentencing guidelines, and for the assessment of leniency applications.[49] Some commentators go further and suggest that the CCI adopt a rule of mandatory full amnesty for the first qualifying applicant, removing discretion entirely at that stage and giving firms a guaranteed outcome to rely on. More broadly, predictability in a leniency regime is not something achieved through a single amendment; it develops through consistent institutional practice over time, and periodic review of what is and is not working.

Protecting Applicant Confidentiality

The confidentiality concerns discussed earlier can be addressed by drawing on established international practice. In Brazil, the confidentiality of a leniency applicant's identity is protected by the competition authorities throughout the investigation and right up to the final judgment.[50] In the United States, the Department of Justice's Antitrust Division keeps all leniency-related information secret and discloses it only with the applicant's consent, a protection that holds even when foreign competition agencies request the same information. Canada permits disclosure only in narrow, defined circumstances, such as where the law requires it, the applicant consents, or disclosure is necessary to prevent a criminal offence.

India could adapt these models by amending the Lesser Penalty Regulations to narrow the CCI's existing discretion to disclose applicant information. Three specific changes would help: restricting any disclosure strictly to investigations directly connected to the disclosed cartel, expressly prohibiting the release of any information that could identify the applicant, and requiring the CCI to obtain a court order before sharing leniency material with third parties. Together, these changes would bring India's confidentiality protections closer to global standards and reduce the risk that an applicant's own disclosure becomes a liability in unrelated proceedings.

Resolving the Waterfall Mechanism

The uncertainty created by the current first-come-first-served processing of leniency plus applications can be addressed through more transparent case management rather than a change

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[49] William E. Kovacic, *Transparency in Competition Policy*, A.B.A. SECTION OF ANTITRUST L. (2009); U.S. SENTENCING GUIDELINES MANUAL § 2R1.1 (U.S. SENTENCING COMM'N; Communication from the Commission, Guidelines on the Method of Setting Fines Imposed Pursuant to Article 23(2)(a) of Regulation No 1/2003, 2006 O.J. (C 210) 2.
[50] CONSELHO ADMINISTRATIVO DE DEFESA ECONÔMICA (CADE), GUIDELINES FOR THE LENIENCY PROGRAM (2021).

in substantive policy. An electronic queue system, where applications are automatically timestamped and processed in order, would remove ambiguity about where an applicant stands. This could be paired with a simple notification protocol i.e. an online portal informing applicants whether their claim is pending behind an earlier one, with periodic status updates so that firms are not left waiting in silence.

Beyond communication, the Regulations could be amended to fix a maximum timeframe within which the CCI must decide the first pending application, giving subsequent applicants a reasonably certain window to expect a decision. Introducing clearly defined criteria to prioritise applications by the apparent severity of the disclosed cartel would further ensure that the most serious conduct is investigated first, without abandoning the underlying first-come-first-served principle. These are modest procedural fixes, but they directly address the uncertainty that currently discourages firms from applying at all.

VII. Gap in the Whistleblower Protections and Incentives

The preceding discussion on personal liability points to a related, and equally serious, gap: India has no dedicated statute protecting individuals who report cartel conduct. The CCI's leniency programme under Section 46 protects the enterprise that self-reports, but it offers no specific protection to an individual employee who reports their employer's cartel conduct against the company's wishes. The Whistle Blowers Protection Act, 2014 is of no help here, since it applies only to disclosures against public servants and government bodies, not private anti-competitive conduct. The Companies Act, 2013 requires certain companies to maintain internal vigil mechanisms under Section 177, but these are voluntary corporate policies without the backing of law, and offer no protection once an employee reports outside the company to the CCI itself.[51]

This gap matters because it undermines the very "race" that a leniency programme depends on. As discussed earlier, successful leniency regimes work by pitting a firm against its own employees, since employees have the most to lose from continued concealment and the most to gain from reporting first.[52]In India, an employee who reports cartel conduct risks termination, litigation, or professional retaliation with almost no legal recourse. This

[51] The Whistle Blowers Protection Act, No. 17 of 2014, INDIA CODE (2014); The Companies Act, No. 18 of 2013, INDIA CODE (2013), § 177.
[52] *Supra* note 46..

discourages the flow of information to the CCI at its source, and weakens the leniency plus regime before an application is ever filed. CCI Chairperson Dr. Ravneet Kaur has himself called for the introduction of a dedicated whistleblower framework, potentially including financial rewards for informants.

Comparative practice shows several paths India could draw on. The European Union addresses this gap through the Whistleblower Directive, which requires member states to set up reporting channels and protect whistleblowers from retaliation including dismissal, demotion, and harassment, across all breaches of EU law, including competition law.[53] It does not offer financial rewards, but it is reinforced by the ECN+ Directive, which shields leniency materials from disclosure in later proceedings, and by the European Commission's own practice of protecting the identity of leniency applicants and their employees.[54]

The United States goes further by combining protection with financial incentive. The Criminal Antitrust Anti-Retaliation Act, 2020 explicitly shields employees who report price-fixing, bid-rigging, or market allocation from being discharged or discriminated against, while DOJ leniency policy extends coverage to an applicant company's cooperating employees.[55] Separately, the False Claims Act's qui tam mechanism allows private individuals to sue on the government's behalf over fraud in public contracts, including bid-rigging, and rewards them with 15–30% of any recovery; a structure that has driven tens of billions of dollars in recoveries and demonstrates just how powerful a financial incentive can be.[56] The UK's Competition and Markets Authority runs a more modest but similar informant reward policy, offering up to GBP 100,000 for information leading to enforcement action, while South Korea's Fair Trade Commission offers rewards of up to roughly USD 2.2 million.[57] Both reflect a clear global trend toward rewarding, not merely protecting, individual informants.

Until India legislates a comparable framework, the burden falls on companies to fill the gap voluntarily. Internal whistleblower mechanisms like anonymous reporting channels, clear anti-retaliation policies, confidential investigation protocols, and escalation routes that bypass

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[53] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the Protection of Persons Who Report Breaches of Union Law, 2019 O.J. (L 305) 17.
[54] Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to Empower the Competition Authorities of the Member States to Be More Effective Enforcers and to Ensure the Proper Functioning of the Internal Market, art. 31, 2019 O.J. (L 11) 3.
[55] Criminal Antitrust Anti-Retaliation Act of 2020, Pub. L. No. 116-257, 134 Stat. 1147.
[56] False Claims Act, 31 U.S.C. §§ 3729–3733 (2018).
[57] COMPETITION & MKTS. AUTH., *Cartels: Confidential Guidance and Informant Rewards.*

implicated managers, allow a company to detect cartel conduct internally before it reaches the CCI, preserving the option of a first-in leniency application.[58] These measures cannot substitute for statutory protection, but they offer a practical interim safeguard while India considers whether, and how, to introduce a dedicated whistleblower regime for competition law.

VIII. Conclusion

Cartels endanger competitive markets precisely because they are designed to stay hidden. This makes detection, not just prohibition, the real challenge for competition law. The Competition Act, 2002 rightly treats cartelisation as a grave offence, but strict rules mean little if the conduct they target cannot be found. Traditional investigation, weighed down by courts' insistence on corroborative evidence, has repeatedly struggled with this problem. Leniency has therefore become India's most practical tool for breaking cartels from within, and its growing use, from the early cement cartel case to the DC fans, dry cell batteries, and bearings matters, shows the CCI slowly gaining confidence in leniency-based evidence.

Yet this study has also shown that India's leniency framework, including its leniency plus addition, carries real weaknesses: excessive discretion, unpredictable penalty reductions, weak protection for individuals and confidential information, and silence on how disclosures interact with private damages claims. Compared to mature regimes like the US and EU, India's system still lacks the certainty firms need to treat disclosure as the safer choice. Going forward, a few changes would help close this gap. The CCI should set out clear, binding conditions for leniency plus eligibility, and keep its maximum reduction below that of ordinary leniency, so firms are not tempted to split into smaller cartels purely to claim the benefit. Some form of penalty plus, backed by consequences for non-disclosure, would sharpen the incentive to come forward. Confidentiality protections need strengthening, and specific rules should enable private enforcement without exposing leniency applicants to disproportionate risk. Above all, the CCI must apply its standards uniformly.

[58] OECD, *Roundtable on Facilitating Access to Whistleblower Programmes in International Cartel Cases* (2019).