

02:49 PM | 08 FEB

LIVE

MARKET STATS

सेंसेक्स

36,719 ▼ -251.31

निफ्टी 50

10,997 ▼ -71.50

सोना (एमसीएक्स) (₹/10 ...

33,035.00 ▼ -134.00

यूएसडी/भारतीय ...

71.10 ▼ -0.36

ई-टी मार्केट एप
डाउनलोड करेंCHOOSE
LANGUAGE
HIN

CCI verdicts fail to act as deterrents to malpractice

The competition watchdog's purpose and relevance is being questioned both inside and outside the commission. Without enforcement, the regulator's rulings haven't set any precedents.

By Deepali Gupta, ET Bureau | Updated: Jan 02, 2018, 12.24 AM IST

Save

1

Comments



In most cases, matters are stuck not on merit, but simply rejected as the process and presentation of the case has been found wanting in trial courts.

Remember Dhruvkumar Lallubhai Desai from 2012? The 74-year-old responsible for delivering a body blow to 11 cement companies has faded away from our collective consciousness, as has the Rs 6,700-crore head-turning fine the Competition Commission of India (CCI [NSE 0.00 %](#)) had delivered against the "cartel," acting on Desai's complaint.

Five years on, that CCI verdict has lost most of its sting after being tossed back and forth between various courts. Pending judicial

decisions has decided a similar fate for most penalties imposed by the commission since its inception in 2009.

After levying fines of Rs 13,981 crore since inception, the CCI has only recovered Rs 96 crore till March 2016. In fact, even its very first landmark verdict against real estate developer DLF [NSE 1.75 %](#) for Rs 630 crore continues to linger in Supreme Court. The same is true of a Google verdict, in what was a breakthrough report from the commission ahead of global counterparts, who were also investigating the technology giant for monopoly practices.

Uncompetitive Numbers

Competition | Till March 2016,

BUDGET 2019



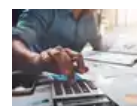
Fiscal Deficit target of 3% is feasible as we are growing at a speed never seen before: FM Piyush Goyal



View: The government is performing a risky high-wire balancing act



Jobs plan is missing link in Modi's Interim Budget amid drama over data



Modi wants you to fall in love with FDs again



Should mutual fund investors alter their strategy after Budget 2019?

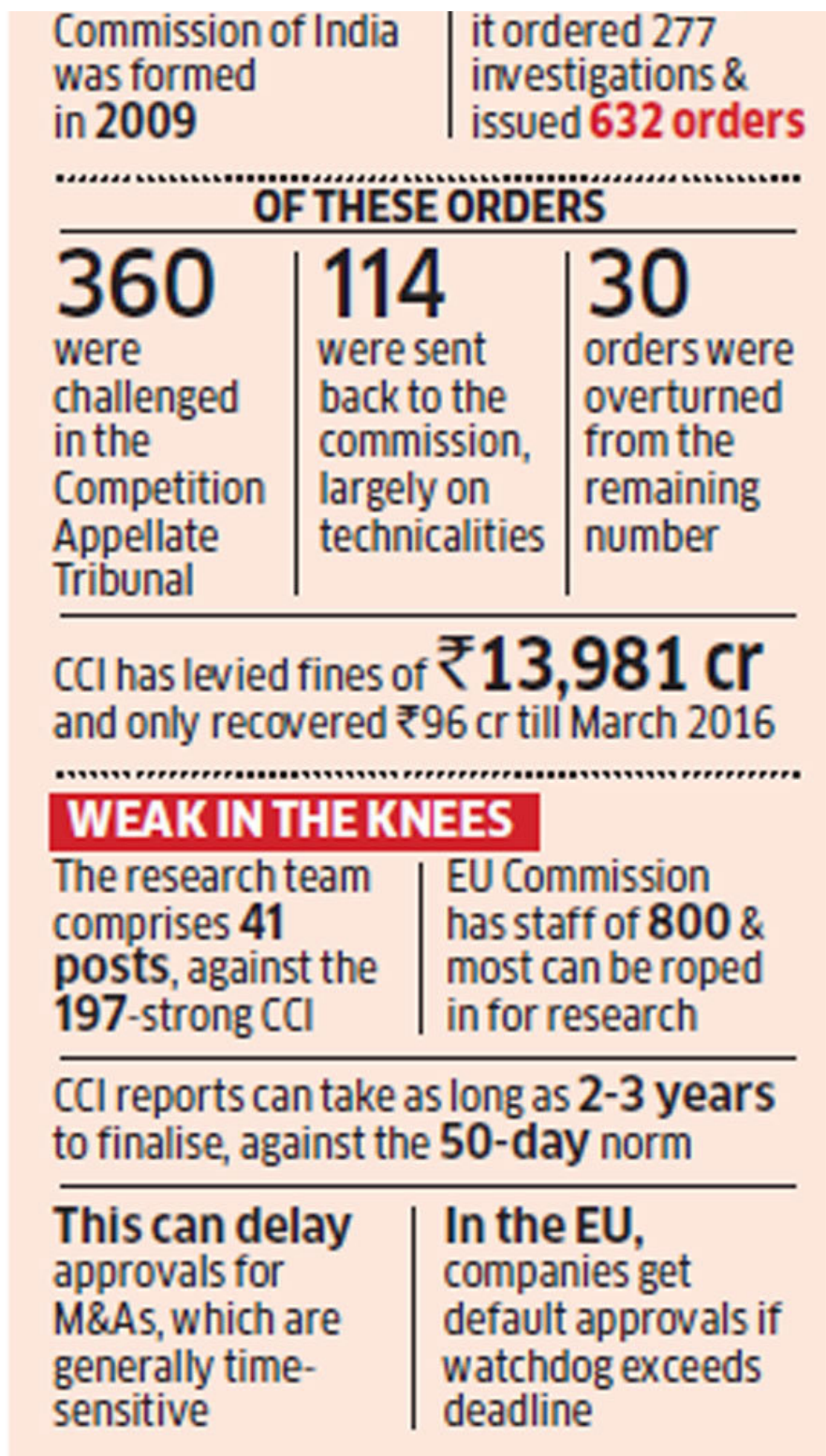
[More from Budget 2019 >>](#)

SPOTLIGHT

Equity»Large Cap

Sponsored





Desai's case too is languishing. "It started out well, but penalties are still stuck in court processes. As a result, cement prices in India are still nearly double those in neighbouring countries," says Raju John, executive secretary, Builders Association of India, which had backed Desai to take on the strong cement lobby against cartelisation. Today, the decision on the penalty is still awaited from higher courts.

CAUGHT IN A VICIOUS CYCLE

In most cases, matters are stuck not on merit, but simply rejected as the process and presentation of the case has been found wanting in trial courts. The CCI is thus caught in a

Motilal Oswal Focused 25 Fund Direct-Growth

★★★★★ Figures in %

1M	3M	6M	1Yr	3Yrs
0.11	4.06	-7.21	-1.53	12.89

INVEST NOW

For regulatory disclaimers, [click here](#).



Most Read | **Most Shared** | **Most Commented**

From glory to dust: An Ambani brand's journey to bankruptcy

Victory for India: UK clears Vijay Mallya's extradition

Realty deal at heart of ICICI probe against Chanda Kochhar

Morgan Stanley warns Walmart may exit Flipkart post new FDI rules

How Jeff Bezos lost out to billionaire Mukesh Ambani in poll-bound India

[More »](#)

Top Trending Terms

Share Market NPS Top Startups Share Bazar IPO
Top 10 Investment Options Aadhaar Card Nifty
How to Save Income Tax Mutual Funds
Top 10 Mutual Funds to Invest GST IFSC Code
Income Tax Calculator

ET

Cons of the richer millennial

India's co-operative-dominated dairy business is changing face

ET

India missed the magic of methanol. Can it get back on track?

ET

[GO TO ET PRIME →](#)

Not to be Missed

vicious cycle, in which its purpose and relevance is beginning to be questioned both from within and without.



Without enforcement, the regulator's rulings haven't set any precedents and do not act as any sort of deterrent whatsoever. "We now use it as a bargaining tool and file applications on behalf of clients," says a prominent lawyer; thereafter, investigations take long and frustrate some decisions, he adds.

"Clarity will emerge once jurisprudence evolves," says Ashok Chawla, former chairman, CCI. Jurisprudence is historical examples that guide new decisions of a court.

Stressed with a limited number of demotivated researchers and bureaucrats unfamiliar with the judicial process, combined with the stringent stance of judges in appellate courts, a bulk of the CCI's outcomes are being returned or overturned on technical grounds.

"A fully functional competition regime was expected to add at least 0.5% to the GDP. Unfortunately, this remains a pipe dream in the Indian context," says Suhail Nathani, managing partner, Economic Laws Practice. He defends the CCI's decisions against challenges in its early days.

"The miniscule recovery of fines and delay in the appeal process has also meant that there has been no compensation paid to those affected by anti-competitive conduct," says Nathani. In the cement case for example, the CCI has powers to ask companies to refund the amount overcharged to each customer, with a receipt.

"In the end, it is the consumer who is suffering. Cement is used not only by builders, but individuals for home repairs," reminds John of Builders Association.

In India, like the US and EU, the objective of the commission is to protect consumer interest and the law is drafted so some of the penalties collected would be paid to end customers who were affected by cartelisation. So far, though, no consumer has benefitted from this.

The EU commission has levied €9.39 billion of fines since 2013. "Over the past 10 years, we have recovered the large majority of fines imposed," says Richardo Cardoso, spokesman for the commission.

Since 2009, when the Indian Commission was formed, till March 2016, the body ordered 277 investigations and issued 632 orders. Of these, 360 were challenged in the Competition Appellate Tribunal ([Compat](#)) and 114 were sent back to the commission, largely on technicalities. Of the remaining, 30 orders were overturned.

Best mid cap mutual funds to invest in 2019



TaMo cracks 29%, most in 26 years; what analysts say



Rate cut today may not mean cheaper loans tomorrow



RIL may sell Jio infra assets to reduce debt



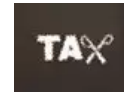
Passenger vehicle sales drop 1.87% in January



Bills introduced to remove green card limits in US



Tax saving options other than section 80C



Time to start nibbling at midcaps: Vikas Khemani



Have a question on P2P? Ask our experts!



Small sellers say field is still not level for playing



Tata Trusts' Venky may move to new role within group



RBI to cut rates again before elections, but no more: Poll



Inflation to speed up in Jan but still below target



CBDT assures quick solution to startups' tax issues



CREAKY APPARATUS

In the case against the Board of Control for Cricket in India (BCCI), the commission did not allow BCCI to refute all the facts and charges it later presented in court, when its penalty was challenged.

In penalties imposed on Coal India and the All India Organization of Chemists and Druggists, the CCI member who signed off the penalty hadn't been present at the hearings when organisations were defending their stance before the commission.

Similarly, in its case against Adani Gas, when the commission found the court questioning the proof it had, CCI presented new documents as evidence.

The appellate court did not accept these and said CCI must first share and hear the company's rebuttal, before presenting any further documents in court.

Naval Chopra, partner at law firm Shardul Amarchand Mangaldas, says, "The law needs to be amended to clear confusion on hearings and evidence gathering principles of the CCI... clarify that the law is meant to protect the process of competition and not individual companies."

In the EU, the chairman of the competition commission signs on behalf of the commission and not an individual. If a penalty is challenged, legal processes are completed in court rather than tossing out the entire research, as per a London-based lawyer.

"In India, it's considered to be an expert body, not a judicial body, but still expected to follow due process, which any public agency must do," adds Dhanendra Kumar, former chairman, CCI, highlighting the conundrum. A mail with a detailed questionnaire sent to the current CCI commissioner did not generate a response till time of going to press on Monday.

TEETHING ISSUES

Many believe the CCI should not be put to such high standards of legal procedures because it delays outcomes. The body also shouldn't have to hear every witness or representation a party wants to make, if it deems it irrelevant or repetitive, they say. "There is no need for all members sitting together to decide on all, even mundane, matters — it's a waste of time and resources. Prioritise and emphasise timebound decisions," says Kumar.

A lawyer practicing competition law says, "The Bar is being unnecessarily litigious. This is bound to frustrate the CCI staff," pointing out that very few cases so far have been overturned on merit.

Hanging cases tend to demoralise the entire team. "Posts in the Director General's office have always been considered punishment posts," says a former official of the commission. Researchers are deputed from departments such as tax and police, and the central government. Churn tends to be high. The research team merely comprises 41 posts, from the 197-strong commission. Compare this to the EU Commission, which has a staff of 800, most of which can be designated for research.

As a result, some reports have taken as long as two to three years for the CCI to finalise, instead of the 50 days set out as a guideline. This also results in delaying approvals for mergers and acquisitions, which typically tend to be very time-sensitive. The EU awards default approvals to companies if time limit is exceeded by the competition watchdog.

Jet grounds 4 aircraft after failing to pay lessors

ET

L&T Finance offloads ADAG shares

ET

Richard Branson will be seen on Earth only till July

ET

Voda Idea expects capital infusion of Rs 25K cr

ET

Patanjali backs govt's revised E-commerce policy

ET

Bezos alleges blackmail threat from National Enquirer

ET

RBI move to regulate ePayments may secure ecosystem

ET

Colleague asked to quit, 70 Jet engineers report sick

ET

Blackstone, Airbnb, Harrods chiefs to speak at GBS 2019

ET

Nippon Steel JV to be equity accounted: ArcelorMittal

ET

Diageo sells office space in UB Tower

ET

Gail sets up satellite LNG station in Bhubaneswar

ET

Voda Idea expects Rs 25K cr fund infusion in April

ET

SFIO moves NCLT for winding up of IBMA, JPL

ET

BLOWN BY THE WINDS OF CHANGE

Earlier this year, the tribunal set up to deal with appeals of penalties was merged with the [National Companies Law Appellate Tribunal](#). "By doing away with the COMPAT, the government practically erased institutional memory that was developed over the years to specifically deal with competition law," says Economic Laws Practice's Nathani.

Even after all these years, CCI is still finding its feet. Recent changes in regulations and increases in thresholds and timeframe to approach the commission dilute its authority, says the former official quoted earlier.

The [Bombay High Court](#) recently said the CCI was overstepping its jurisdiction as it tossed out an order of cartelisation against incumbent telecom operators that had not enabled interoperability with new player Reliance Jio Infocomm. The former official says decisions such as these undermine CCI and weaken its future stature.

"I feel, for a large country like India, one probably needs to have a few benches — say, in [Mumbai](#) and Chennai," says Kumar. That is the model followed in the US, where punitive action for the antitrust body tends to be jail sentences, not fines. Apart from a 600-strong central body, the US has state laws that oversee competition in all sectors.

The CCI is a young body, compared to the decades and century of its global counterparts. But it is key to regulating a consumer-led market such as India. Experts say its decisions in real estate resulted in the Real Estate (Regulation and Development) Act, or RERA, a new regulatory law. CCI has also effected change in drug distribution. Since its inception, it has gained focus and commanded attention globally. So much so, that the next annual International Competition Network (ICN) Conference is scheduled in India for May 2018.

Now, it needs roots for a firm grip in the Indian consumer market.

[Ashutosh Raghuvanshi named Fortis Healthcare CEO](#)

ET

[Rs 20-lakh packages are the new normal at B-schools](#)

ET

[RBI slaps fine of Rs 1 cr on State Bank of India](#)

ET

[Govt plans to provide penal powers to DGCA](#)

ET

[What analysts think of RBI's monetary policy review](#)

ET

[Twitter shares sink after weak revenue forecast](#)

ET

[J&K has more freedom than Pakistan, says US report](#)

ET

[Runway repairs at Mumbai airport disrupts 230 flights](#)

ET

[Tata Motors reports massive Rs 26,961 crore Q3 loss](#)

ET

[Shaktikanta Das delivers 'election cut' for Modi](#)

ET

[Quadrige boss Gerald Cotten left a will in wife's name](#)

ET

[RBI rules out changes in one-day NPA recognition norms](#)

ET

[No deal Brexit will force 3-week JLR shutdown: TaMo](#)

ET



TRENDING ON ET - BUDGET 2019 FULL COVERAGE »

Read more on

Competition Commission Of India

Mumbai

CCI

BCCI

National Companies Law Appellate Tribunal

CCI Rulings

COMPAT

Comments (1)

Add Your Comments

Download The [Economic Times Business News App](#) for the Latest News in Business, Market & More.

From Around The Web

Sponsored by



3 BHK apts starting at 1.67 cr. In Gurgaon
Bestech Group



Own these shops At Rs. 22 Lakhs for your second income
Satya Group



Yours To Experience - Ready To Move-In Exquisite Apartments
Experion Windchants



Ghee is prepared using an age-old Vedic, 100% chemical free.
Qtrove

More from The Economic Times



Das won't go easy on banks with NPAs



Koramangala startups hail Budget 2016, but seek more clarity



India to get 'flying Oval Office' with rocket shield



How to download Aadhaar from the UIDAI website

Get a Quote

Type Company Name

Get Quote

Browse Companies

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z | 1 2 3 4 5 6 7 8 9

Browse Mutual Funds

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Powered by

Live Market
News
Portfolio
Mobile
Live TV
Biz Listings

Industry
Newsletters
Commodities
Speed
Blogs
RSS

About Us
Subscribe to ET Prime
Book your Newspaper Subscription
Create Your Own Ad
Advertise with Us
Terms of Use & Grievance Redressal
Privacy policy
Contact Us

FOLLOW US

Download it from

APP STORE

Download it from

GOOGLE PLAY

Download it from

Windows Store

Other Times Group news sites

इकनॉमिक टाइम्स | ईकोनोमिक्स टाइम्स | Pune Mirror | Bangalore Mirror | Ahmedabad Mirror | ItsMyAscent | Education Times | Brand Capital | Mumbai Mirror | Times Now | Indiatimes | नवभारत टाइम्स | महाराष्ट्र टाइम्स | ವಿಜಯ ಕರ್ನಾಟಕ | Go Green | AdAge India | Eisamay | IGN India | NavGujarat Samay | Times of India | Samayam Tamil | Samayam Telugu | Miss Kyra | Bombay Times | Filmipop | Games App | MX Player

Living and Entertainment

Timescity | iDiva | Entertainment | Zoom | Healthmeup | Luxpresso | Gadget Reviews | Titanium & Platinum Credit Card | Online Songs | MensXP | Hotels | Travel Destinations | Cricbuzz | Recipes | Gaana | Happytrips | Getsmartapp

Interest Network

itimes

Hot on the Web

Stock market crash | GST | Rupee | Aadhaar Card | Mumbai News | RBI | Delhi News | How to save Income Tax | Sensex Today | Nifty Bank | Budget 2019 | Income Tax Calculator

Services

Book print ads | Online shopping | Matrimonial | Astrology | Jobs | Tech Community | Property | Buy car | Bikes in India | Free Classifieds | Send money to India | Used Cars | Restaurants in Delhi | Remit to India | Buy Mobiles | Listen Songs | News | TimesMobile | Real Estate Developers | Restaurant Deals in Delhi | Car Insurance | Gadgets Now | Free Business Listings | CouponDunia | Remit2India | Techradar | AliveAR | Getsmartapp App | ETMoney Finance App | Feedback | Auto | Longwalks App

Assam Budget Highlights

Amazon

RBI Policy meet

Gold

Payment Gateways

Tax Saving Guide

Piyush Goyal

Budget 2019

RBI repo rate

Rakesh Jhunjhunwala

RBI rate cut for farmers

RBI rate cut

Copyright © 2019 Bennett, Coleman & Co. Ltd. All rights reserved. For reprint rights: Times Syndication Service

https://economictimes.indiatimes.com/corporate/cpi-verdicts-fail-to-act-as-deterrents-to-malpractice/articleshow/62329440.cms

6/6