ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

Market Matters

The Antitrust Brief

NOVEMBER | 2025

The CCI reaffirms its penalty computation in solid waste management bid rigging

On November 10, 2025, the Competition Commission of India (**CCI**) reaffirmed the quantum of penalty, previously imposed in a case involving bid rigging of certain tenders issued by the Pune Municipal Corporation. This revisiting of the quantum of penalty by the CCI arose in the context of a 2022 remand order from the National Company Law Appellate Tribunal (**NCLAT**). In its order, the NCLAT had directed that when the CCI decides to impose the highest permissible penalty, it must give the concerned party a full opportunity to explain as to why the highest permissible penalty should not be imposed. The CCI challenged the NCLAT's remand order before the Supreme Court, but the challenge was rejected.

The CCI's final order on the quantum of penalty

On August 13, 2025 the CCI, per the NCLAT's direction, heard the contravening parties on the quantum of penalties and arrived at the following conclusions:

Usage of global turnover.

The CCI rejected the parties' plea to use 'relevant turnover' for penalty computation. Referencing the Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024 (**Penalty Guidelines**), the CCI utilized global turnover since it was not feasible to determine the relevant turnover. This was because certain contravening parties had nil relevant turnover since they were not present in the relevant market. The CCI opted to apply the global turnover to all contravening parties, including those present in the relevant market, to prevent an "inequitable result creating an anomalous situation".

Rejection of mitigating factors.

Plea of first time offence. The CCI rejected this defence on the ground that the violation encompassed at least 7 tenders spread over a period of 2 years.

Lack of appreciable adverse effect on competition (AAEC). The parties argued that their sole intention was to ensure successful completion of the tender without any extension of due date, and since there were no other lower rate bidders, no harm was caused to the exchequer. The CCI rejected this argument, noting that the sole intention of the parties was to get the tender awarded to one of the contravening parties and enable illegal gains. The CCI remarked that the ignorance of law is no excuse.

Defense of cover bidders. The cover bidders argued that they indulged in the conduct of providing proxy bids only at the behest of a family friend (who was the Managing Director of Ecoman Enviro Solutions) and that there was no evidence that the alleged conduct of these parties has caused any hindrance in the participation of other possible bidders. The CCI rejected this argument and reiterated that all the parties had already accepted their guilt in the leniency applications and that ignorance of law was no excuse.

The CCI found the conduct of the parties and the responsible individuals egregious enough to warrant the highest penalty allowed by law. It therefore maintained the penalties it had previously imposed in 2018 on each contravening entity and individual.

The order can be accessed here.

The CCI directs an investigation against Basketball Federation of India

On November 25, 2025, the CCI directed an investigation against the Basketball Federation of India (**BFI**) following an information filed by Elite Pro Basketball Private Limited (**Elite Pro**). BFI is the national sports federation for basketball in India and is recognized by the Ministry of Youth Affairs and Sports. Elite Pro is involved in the development and promotion of basketball in India.

Elite Pro alleged that BFI imposed unfair restrictions on basketball players in India by restricting participation in leagues other than those under BFI's ambit and restrained participation even in promotional leagues. It was also alleged that BFI denied market access to Elite Pro. Elite Pro cited several instances wherein BFI either ignored its requests for approval of events, or rejected such requests lacking any valid justifications.

The CCI's *prima facie* observations:

BFI is an 'enterprise'.
To be considered as an 'enterprise' under the Competition Act, it must be seen whether the activities undertaken by the enterprise are 'economic' in nature, regardless of a profit/ commercial objective. BFI was earning income through charges for admission, registration etc., and thus was found to be an 'enterprise'.

BFI's dominant position.
BFI is dominant in the market for the organization of basketball leagues/ events/ tournaments in India, as it is the sole national-level federation recognized by the relevant ministry to regulate the sport of basketball.

BFI limited provision of basketball players, referees, coaches to non-BFI events.
BFI intentionally restricted the players from participating in non-BFI events by threatening them with stringent action in case of such participation.

BFI denied market access to organizers of basketball events (such as Elite Pro).
BFI's denial of authorization to Elite Pro for conducting events amounted to a denial of market access.

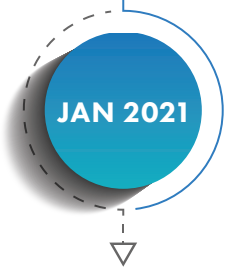
BFI denied basketball players the choice of tournaments.
BFI's circular which threatened stringent action on players participating in unauthorized tournaments, denied the opportunity to participate in tournaments of their choice and amounted to forcing an exclusive distribution agreement.

BFI did not have a justification for refusing authorization to events.
BFI's refusal to authorize third party events (such as those of Elite Pro), without any justification amounted to refusal to deal.

The order can be accessed here.

The NCLAT upholds the penalty imposed by the CCI on Meta and WhatsApp, but sets aside the contravention of leveraging

On November 4, 2025, the NCLAT issued an order affirming the penalty of INR 213.14 crores (~USD 24.07 million) imposed by the CCI on Meta Platforms Inc. (**Meta**) and WhatsApp LLC (**WhatsApp**) nearly a year ago. The NCLAT, however, overruled the CCI's finding of contravention against Meta for leveraging its dominant position in over-the-top (**OTT**) messaging app market to protect its position in the online display advertising market.



WhatsApp's Privacy Policy Update

The update mandated expanded user data collection and sharing of data with "Meta group" companies, particularly for commercial/ advertising purposes. The 2021 update was presented as a "take-it-or-leave-it" condition, leaving users with no choice.

CCI investigation and final order

- In March 2021, the CCI initiated a *suo motu* investigation into WhatsApp's 2021 Privacy Policy update.
- Following the investigation, the CCI found that Meta (through WhatsApp) had abused its dominant position (i) by imposing unfair conditions on users; (ii) by denying market access to rivals, and (iii) leveraged its dominance in the OTT messaging market to consolidate its dominant position in display advertising.
- The CCI imposed a penalty of INR 213.14 Crore (~USD 24.07 Million) and directed Meta to comply with remedies, within a 3 month period, including (i) a ban on sharing of users WhatsApp data with Meta companies for advertising purposes, for 5 years; (ii) introducing transparency with respect to purpose of sharing user-data for non-advertising purposes; and (iii) offering opt-out option for WhatsApp users.

NCLAT's interim order

Meta and WhatsApp appealed the CCI's order in the NCLAT.

The NCLAT granted an interim stay on the 5 year ban on data sharing, upheld the other compliance directives, and also directed Meta and WhatsApp to deposit 50% of the penalty amount within 2 weeks of the NCLAT's interim order.

The NCLAT additionally observed that the recently passed Digital Personal Data Protection Act, 2023 (**DPDP**) was likely to be enforced soon and may cover many of the issues related to data sharing and protection. This contributed to NCLAT's prima facie view in favour of staying the ban.

NCLAT's final order

Key Findings of the NCLAT

The CCI has jurisdiction in data privacy matters.

Competition law and data protection frameworks were complementary in nature, which allowed the CCI to analyse data coercion from an antitrust perspective without infringing data protection law.

"Privacy" was an essential non-price parameter.

The NCLAT held that privacy was recognised by competition regulators worldwide as an important parameter of competition. It noted that privacy and data collection practices could influence the state of competition because they affect consumer choice, quality, and fairness in the market.

Effects analysis was rightly based on likely harm.

The NCLAT observed that the CCI had conducted a comprehensive effects analysis, and that effects in digital markets could be established through market structure, conduct, and qualitative evidence without exhaustive quantitative user surveys. It also affirmed that competition law permits intervention based on likely harm, and found no infirmity in the CCI's assessment of user imposition and competitive impact.

WhatApp's 2021 update imposed unfair conditions on users.

The NCLAT held that WhatsApp's "take it or leave it" policy, without an effective opt-out option and requiring mandatory acceptance of broad and vague data-sharing terms amounted to coercion and unfair conditions on users.

Leveraging led to a denial of market access.

The NCLAT held that cross-platform data sharing amongst Whatsapp and Meta group strengthened Meta's position in the display advertising market and created entry barriers for rivals. The NCLAT noted that even though Whatsapp and Meta were distinct legal entities, Whatsapp was fully controlled by Meta and therefore, it could be concluded that Meta leveraged its dominance in the market for OTT messaging app to protect/ extend its dominance in the market for online display advertising. However, Meta's conduct was noted as leading to a denial of market access.

Having found Meta and WhatsApp to have abused their dominant position, the NCLAT upheld the penalty imposed by the CCI, including all the behavioural remedies except for the 5 year ban on WhatsApp on sharing of user data with Meta entities for advertising purposes, considering it inherently excessive.

The NCLAT's order can be accessed here and our detailed alert on the CCI order here.

Beyond the brief: The jurisprudence on effects-based assessment has also been considered by the Supreme Court. In *CCI v Schott Glass*[1] , the Apex Court had held that a separate evidence-based inquiry by the CCI is required to demonstrate whether an alleged conduct results in actual or likely harm.

Several prior orders of the CCI have been challenged for the absence of an "effects analysis" in cases involving abuse of dominant position. In 2023, the NCLAT in *Google LLC & Anr. v CCI*,[2] agreeing with Google's challenge, noted that the CCI **must** carry out an effects analysis before arriving at a finding of abuse. This is currently pending before the Supreme Court. In a different challenge by Google[3] before the NCLAT (**Play Case**), the NCLAT noted that actual conduct by an enterprise is essential to establish a contravention, i.e., mere likelihood of a conduct may not suffice.

The NCLAT's Meta ruling reiterates the indispensable requirement for an effects analysis to establish an abuse of dominance. Specifically, in digital markets, 'effects' of a conduct under review may be demonstrated through qualitative, structural and conduct-based evidence, and not simply "hard" quantitative proof. The NCLAT accepted that in markets characterized by parameters such as lock-in, irreversible data integration and privacy, likely harm can be demonstrated through coercive consent design, expanded cross-platform data use, and third-party submissions on data-driven foreclosure. This was a peculiar order since the NCLAT agreed with the CCI that it may consider both potential and actual harm in assessing effects of alleged conduct. The Meta ruling aligns with the NCLAT's reasoning in the Play Case and sheds light on the prospects of 'likely' harm being considered in abuse cases, especially those relating to digital markets.

[1] 2025 INSC 668.
[2] Competition Appeal No. 01 of 2023.
[3] Alphabet Inc v CCI, Competition Appeal No. 04 of 2023.

The NCLAT upholds the maintainability of appeals filed by individuals in a partnership firm

On November 7, 2025, the NCLAT upheld the maintainability of an appeal filed by Hari Narayan Bihani, a partnership firm, and its partner, Keshav Bihani, against the CCI's order dated June 9, 2022 holding him liable for being in charge of Hari Narayan Bihani's business and actively participating in deciding the prices quoted by the firm and receiving cartel-related communication.

Background

The CCI's inquiry was initiated pursuant to a lesser penalty application filed by Jai Polypan Private Ltd. (including its individuals). The CCI in its final decision found a contravention of bid-rigging in the supply of protective tubes to Indian Railways and imposed monetary penalties on the concerned entities and their individuals. Amongst these, the CCI also penalized Hari Narayan Bihani and its partner, Keshav Bihani.

The NCLAT's observation

The CCI contended before the NCLAT that the appeal filed by Keshav Bihani was not maintainable since he was penalized under Section 48 of the Competition Act, which is a 'non-appealable' order, i.e., is not specifically mentioned under Section 53A of the Competition Act. However, the NCLAT disagreed and noted that the CCI's order was captioned as an order passed under Section 27, which is an 'appealable' order under Section 53A and the penalty was imposed on Keshav Bihani and other individuals under Section 27(b) of the Competition Act, therefore, an appeal under the CCI's order is maintainable.

The order can be accessed here.

The Delhi HC holds the CCI's levy of interest on penalty to be without jurisdiction and contrary to the mandatory established procedure

On November 1, 2025, a Division Bench of the Delhi High Court (**Delhi HC**) dismissed the CCI's appeal against a judgment of the single judge of the Delhi High Court which had set aside the CCI's levy of interest on a penalty imposed in a 2018 order. The Division Bench of the Delhi HC upheld the finding of the Single Judge that under the Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011 (**Penalty Recovery Regulations**), the CCI **must** 'issue' and 'serve' a demand notice before any interest liability could accrue in relation to a penalty imposed by the CCI.

Background

On August 30, 2018, the CCI passed an order (**CCI Order**) penalizing Geep Industries India Private Limited (**Geep**) and its individuals (**Individuals**) for cartelisation in the dry-cell batteries market. On appeal by Geep and the Individuals against the CCI Order, the NCLAT, by its judgment dated March 31, 2023, upheld the CCI's finding of a contravention but reduced the penalty imposed on Geep. The NCLAT did not modify the penalty amounts imposed on the Individuals.

Under the CCI Order, as typically provided, the CCI had allowed 60 days for payment of the penalty amounts. Under the Penalty Recovery Regulations, on expiry of the 60-day period, the CCI is required to 'issue' and 'serve' a demand notice under which a period of up to 30 days is allowed for penalty payment, after the expiry of which, interest becomes leviable on the penalty amounts.

The CCI, in the instant case, issued demand notices to Geep and the Individuals for payment of the penalty amounts (**Demand Notices**) for the first time only after the NCLAT judgment which was nearly five years after the CCI's order imposing the original penalty on Geep and its individuals. Under these Demand Notices, the CCI considered a 30 day period as having been "notionally" allowed for penalty payment under a 'deemed' demand notice. With this approach, under the Demand Notices, the CCI levied an interest (on the reduced penalty amount) computed from December 10, 2018, i.e., 90 days after the CCI's Order, even though demand notices had not been served on Geep or its individuals after expiry of the 60 day period in the CCI Order.
Upon challenge by Geep and Individuals, the Single Judge of the Delhi HC set aside the CCI's levy of interest on the penalty payment, observing that interest on payment of penalty can only be levied on a failure to pay the penalty within the period that has been specified under a demand notice that had been validly 'issued' and 'served' upon the party.

The Delhi HC's observations in appeal by the CCI

The Division Bench of the Delhi HC dismissed the CCI's appeal against the Single Judge's order, observing:

- The CCI must 'issue' and 'serve' a demand notice under the Penalty Recovery Regulations before any interest can be levied on penalty payments.
- The Penalty Recovery Regulations do not allow a retrospective levy of interest, i.e., the CCI cannot levy interest for a period before the date provided under a validly 'issued' and 'served' demand notice.
- Levying interest without following statutory procedure violates constitutional guarantees.

The Delhi HC order can be accessed here.

Delhi HC sets aside CCI's demand for interest on penalty

On November 1, 2025, a Division Bench of the Delhi HC, deciding an appeal filed by United India Insurance Company Limited (**United India Insurance**), set aside a judgment of the Single Judge of Delhi HC, which had upheld the CCI's demand for interest on penalty imposed on United India Insurance.

Background

- On July 10, 2015, the CCI penalized United India Insurance along with other entities for cartelization and bid rigging.
- On appeal by United India Insurance, on October 5, 2015, the erstwhile COMPAT allowed a stay on the CCI's order, subject to deposit of 10% of the penalty amount, which was deposited on October 15, 2015.
- The CCI issued a demand notice dated October 1, 2015 (**First Notice**), which was 'served' on United India Insurance on October 7, 2015, i.e., after the COMPAT had stayed the CCI's order.
- Through a judgment issued on December 9, 2016, the COMPAT modified the penalty imposed by the CCI on United India Insurance and on January 4, 2017, United India Insurance deposited the reduced penalty amount with the CCI.
- On January 17, 2017, the CCI issued a demand notice (**Second Notice**) directing payment of interest for the alleged delay of 14 (fourteen) months in payment of the penalty, i.e., the period from the First Notice till the date of the COMPAT judgment.
- On December 6, 2018, the CCI passed an order directing deposit of the interest, followed by a recovery notice dated December 14, 2018 for payment of the interest within 15 days (together, the 'Recovery Notices').
- United India Insurance challenged the CCI's First Notice, Second Notice, and Recovery Notices, before a single judge of the Delhi HC, who dismissed the challenge and upheld the CCI's demand for interest. United India Insurance appealed the order of the single bench of the Delhi HC before the Division bench of the Delhi HC.

The Division Bench's observations

The First Notice was invalid. The First Notice was served after the COMPAT had stayed the operation of the CCI order. Once such a stay was granted, the CCI order was not enforceable and penalty was not recoverable until the stay was in operation. Accordingly, the First Notice was a "*dead letter*".

The CCI order is replaced by the COMPAT judgment; only the COMPAT judgment survives.
Once the COMPAT passes its judgment, the CCI's order is 'absorbed' into such a judgment through the "*doctrine of merger*" and consequently, only the COMPAT's judgment operates. In this case, once the COMPAT had modified the penalty imposed on United India Insurance, the CCI was required to issue a fresh demand notice for the modified penalty amount. Further, United India Insurance had deposited the modified penalty amount with the CCI even before issuance of the Second Notice and interest could not be levied on such modified penalty.

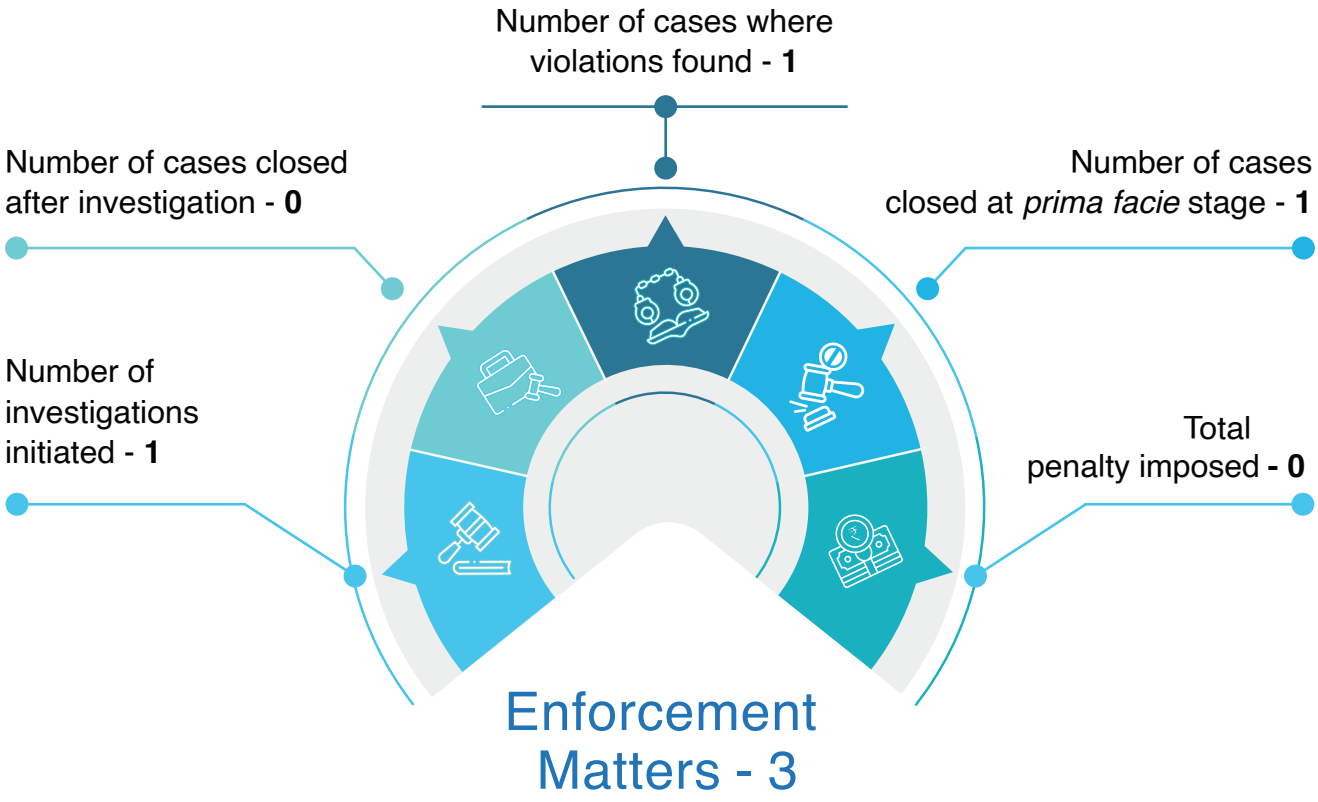
The Delhi HC order can be accessed here.

IN THE NEWS

On November 3, 2025, following months of stakeholder feedback and concerns over the calibration of India's proposed Digital Competition Bill (**DCB**), the Ministry of Corporate Affairs (**MCA**) issued a Request for Proposal seeking to engage an agency for a market study on "Qualitative and Quantitative Thresholds for Big Tech Companies and Core Digital Services." The study will focus on four key areas: thresholds for Systemically Significant Digital Enterprises (**SSDEs**), the scope of Core Digital Services (**CDS**), the legal and institutional framework, and strategies to ensure fair competition while promoting innovation.

Readers will recall that the DCB was first proposed in 2023 after the Committee on Digital Competition Law recommended a new ex-ante framework for regulating major digital platforms. The DCB seeks to govern SSDEs and impose obligations on CDS such as search, marketplaces, app stores, and social media. In August 2025, the DCB was withdrawn after extensive stakeholders highlighted that its proposed ex-ante obligations and broad quantitative thresholds could potentially stifle innovation and impact various stakeholders.

Our detailed alert on the DCB can be accessed *here*, and the RFP released by the MCA is available *here*.



Mergers and Acquisitions

Total Combinations Filed	09	02	Green Channel Filings
Form I	07	00	Form II
Combinations Approved	11	07	Combinations Pending
Gun Jumping Order	00	00	Total penalty imposed

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