

## **Analysis of penalties imposed by competition commission of India**

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**Abstract:** *The Competition Act 2002 has come in the place of MRTP Act 1969. CCI impose penalty for contravention of orders of Competition Commission. Only 0.23% of the Penalty imposed by Competition Commission of India realized in the last 3 years in the 327 cases where penalty has been imposed by the Competition Commission of India. Close to 81% of the total penalty has been stayed by Competition Appellate Tribunal/High Court/ Supreme Court. The regulator aims to promote the culture of compliance among businesses, adding that monetary penalties should be rational and proportional. However, the CCI has issued some major penalties on companies indulging in anti-trust activities.*

### **Introduction**

Competition Commission of India (CCI) enforces ‘The Competition Act, 2002’ to prevent practices having adverse effect on competition, promote and sustain competition in markets, to protect the interests of consumers and ensure freedom of trade carried on by other participants in markets. The commission does not favour imposing penalties and would rather want better compliance to competition laws. CCI has issued some major penalties on companies indulging in anti-trust activities but judicial appeals have either delayed or blocked the regulator from recovering penalty money.

### **Statement of the Problem**

CCI identify the practices having adverse effect on the competition in the market and promote sustain competition. Also CCI take necessary steps to protect the interests of the consumers and ensure freedom of trade carried on by other participants in India. CCI have the powers to impose penalty for contravention of orders of Competition Commission, failure to comply with directions of Commission and Director General, non-furnishing of information on combination, making false statement or omission to furnish material information.

The competition regime consists of competition policy and competition law. The competition policy addresses competition distortions in policies relating to trade, commerce, industry, business, investment, disinvestment, fiscal taxation, IPR, procurement and endeavours to provide competitive neutrality and level playing field. The Competition Commission analyse any adverse effect on competition by way of bid rigging, cartelization, abuse of dominant position and making false statement or omission to furnish material information on combination. The commission has the power to impose penalty for violation of Competition Act 2002. Hence an attempt is made by the researcher to analyse the penalties imposed by CCI to various companies for contraventions of the provisions of the Act.

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### Objectives of the Study

- To analyse the reasons for imposing penalties by Competition Commission of India.
- To analyse the volume of penalties imposed by Competition Commission of India.

### Methods of Data Collection

This study is based on secondary data. The required secondary data were collected from the newspapers and journals.

### Penalties imposed on Cement Companies

The Competition Commission of India imposed a whopping Rs 6,307-crore penalty on 11 leading cement firms for forming a cartel and colluding to charge higher prices from consumers. CCI found cement makers had violated the provisions of the Competition Act, 2002, which deals with anti-competitive contracts, including cartels. The Commission holds the cement firms acting together have limited, controlled and also attempted to control the production and price in the market in India.

**Table 1: Penalties imposed on Cement Companies**

Sl. No.	Name of Cement Companies	Penalties (in Crore)
1	Jaiprakash Associates	Rs 1,323.6
2	Ultra Tech Cements	Rs 1,175.49
3	Ambuja Cement	Rs 1163.91
4	Associated Cement Corporation	Rs 1,147.59
5	Lafarge India	Rs. 490
6	Binani Cement	Rs.167.32
7	Century Cement	Rs. 274.02
8	India Cements	Rs.187.48
9	JK Cements	Rs.128.54
10	Ramco	Rs.258.63
11	Shree Cements	Rs.397.51

**Source:** Secondary Data

The maximum penalty was imposed on Jaiprakash Associates at Rs 1,323.6 crore followed by Aditya Birla Group's Ultratech Cements (Rs 1,175.49 crore), Ambuja Cements (Rs 1163.91 crore) and ACC (Rs 1,147.59 crore). Other companies found guilty are Lafarge India, JK Cement, India Cements, Century cements, Ramco cements, Shree cements and Binani Cements. The industry body, Cement Manufacturers Association has also been penaltyd Rs 73 lakhs.

### Penalties imposed on Car Companies

CCI passed an order in August 2014 imposing a penalty of Rs.2,554 crore on Maruti Suzuki India Ltd, the nation's biggest car maker, and 13 other car makers for failing to sell spare parts in the open market, violating competition law. The monopolistic control over the spare parts and diagnostic tools markets allowed these companies to charge arbitrary and high prices.

The maximum penalty was imposed on Tata Motors at Rs 1,346.46 crore followed by Maruti Zuzuki (Rs 471.14 crore), Mahindra and Mahindra (Rs 292.25 crore). Other companies found guilty are Toyota Kirloskar Motor, Honda Motor, Volkswagen, Fiat India Automobile,

Ford India, General Motors, Nissan, Hindustan Motors, Mercedes Ben, Skoda Auto India and BMW India.

**Table 2: Penalties imposed on Car Companies**

Sl. No.	Name of Car Companies	Penalties (in Crore)
1	Tata Motors	1346.46
2	Maruti Suzuki India Ltd.	471.14
3	Mahindra and Mahindra	292.25
4	Toyota Kirloskar Motor	93.38
5	Honda Motor	78
6	Volkswagen	3.25
7	Fiat India Automobile	29.98
8	Ford India	39.78
9	General Motors	84.58
10	Nissan	1.63
11	Hindustan Motors	13.85
12	Mercedes Ben	23.08
13	Skoda Auto India	46.39
14	BMW India	20.41

**Source:** Secondary Data

### Penalties imposed on Airlines

CCI passed an order imposing a combined penalty of Rs.257.91 crore on three of India's largest airlines. Jet Airways (India) Ltd, Inter Globe Aviation Ltd (which runs IndiGo) and Spice Jet Ltd for alleged cartelization in fixing fuel surcharge on air cargo in November 2015. The three airlines were also directed to cease and desist from indulging in anti-competitive practices.

**Table 3: Penalties imposed on Airlines**

Sl. No.	Name of Airlines	Penalties (in Crore)
1	Inter Globe Aviation Ltd.	63.74
2	Spice Jet Ltd.	42.48
3	Jet Airways (India) Ltd.	151.69

**Source:** Secondary Data

Penalties of Rs.63.74 crore, Rs.42.48 crore and Rs. 151.69 crore were imposed on InterGlobe Aviation, SpiceJet and Jet Airways, respectively. The amount was arrived at by calculating 1% of each airline's annual revenue. The penalty was imposed after investigating a complaint over the fixing of fuel surcharges in cargo transport.

### Penalties imposed to other Companies

CCI found Coal India Ltd., and its three units—Mahanadi Coalfields Ltd, Western Coalfields Ltd and South Eastern Coalfields Ltd—guilty of abusing their dominant positions for supplying non-coking coal and having unfair fuel supply contracts in December 2013. Competition Commission of India has found the DLF Gurgaon Home Developers Private Ltd and its group companies abusing its dominant position by imposing unfair and discriminatory in sale of apartments in a Gurgaon housing project in 2011.

## Analysis of penalties imposed by competition commission of India

CCI passed an order in July 2015, levying a penalty of Rs.420.26 crore on car manufacturer Hyundai Motor India Ltd for violating anti-trust laws in the supply of genuine spare parts and diagnostic tools. The companies had entered agreements that adversely affected market competition and abused their dominant position in the supply of spare parts which affected services of independent mechanics to compete with authorised service stations. CCI passed an order in August 2016, imposing a penalty of Rs.72.96 crore on Lupin, which had refused to supply drugs to Maruti & Co., a drug wholesaler in Karnataka.

**Table 4: Penalties imposed on Other Companies**

Sl. No.	Name of Companies	Penalties (in Crore)
1	Coal India	1773
2	DLF	630
3	Hyundai	420.26
4	Lupin	72.96

**Source:** Secondary Data

Rs.1,773 crore penalty imposed by CCI on Coal India Ltd., and three of its subsidiaries for misusing their monopoly to supply poor quality coal and fixing prices. Rs.630 crore penalties on DLF for abusing its dominant position with respect to three projects in Gurgaon. Penalty of Rs.420.26 crore on car manufacturer Hyundai Motor India Ltd., for violating anti-trust laws in the supply of genuine spare parts and diagnostic tools. Penalty of Rs.72.96 crore on Lupin, which had refused to supply drugs to Maruti & Co., a drug wholesaler in Karnataka.

### Reasons for Imposing Penalties by CCI

**Cartalisation:** CCI passed an order in August 2016 imposing a penalty of over Rs.6,700 crore on 11 cement companies as well as their trade association Cement Manufacturers Association (CMA) for cartalisation. The cement companies used the CMA platform and shared details relating to prices, capacity utilisation, production and dispatch and thereby restricted production and supplies in the market. It was also found that the companies were acting in “concert in fixing prices of cement” which contravenes competition norms. Also CCI passed an order imposing a combined penalty of Rs.257.91 crore on three of India’s largest airlines—Jet Airways (India) Ltd, Interglobe Aviation Ltd (which runs IndiGo) and SpiceJet Ltd for alleged cartelization in fixing fuel surcharge on air cargo. Penalties of Rs.63.74 crore, Rs.42.48 crore and Rs. 151.69 crore were imposed on InterGlobe Aviation, SpiceJet and Jet Airways, respectively.

**Bid rigging:** CCI has imposed a penalty of Rs. 2.3 crore on Grasim, 2.09 crore on Aditya Birla chemical Ltd and Rs. 1.88 crore on Gujarat Alkalies and Chemicals Ltd for their anti-competitive conduct by way of bid rigging.

**Violating Competition Law:** CCI passed an order in August 2014 imposing a penalty of Rs.2,554 crore on Maruti Suzuki India Ltd, the nation’s biggest car maker, and 13 other car makers for failing to sell spare parts in the open market, violating competition law.

**Abuse of Dominant Position:** The CCI in December 2013 had found Coal India and its three subsidiaries for guilty of abuse of dominant position and unfair fuel supply contracts. Also DLF was penalized by the competition regulator for allegedly abusing its dominant position by imposing “unfair and discriminatory” terms on its buyers through buyers’ agreements. CCI had imposed the penalty on DLF for alleged unfair practices in the Belaire project in Gurgaon, which

the company had challenged in the Supreme Court. Also, the Competition Appellate Tribunal had upheld the penalty of Rs.630 crore.

Violating Anti-Trust Law & Abuse of Dominant Position: CCI passed an order in July 2015, levying a penalty of Rs.420.26 crore on car manufacturer Hyundai Motor India Ltd for violating anti-trust laws in the supply of genuine spare parts and diagnostic tools. CCI also found Mahindra Reva Electric Vehicles Pvt. Ltd, a subsidiary of Mahindra and Mahindra Ltd, and Premier, promoted by Doshi Holding Pvt. Ltd, in violation of competition laws. The regulator held that the three companies had entered agreements that adversely affected market competition and abused their dominant position in the supply of spare parts which affected services of independent mechanics to compete with authorised service stations.

### **Suggestions**

The Competition Commission of India (CCI) does not favour imposing penalties and would rather want better compliance to competition laws. The regulator aims to promote the culture of compliance among businesses, adding that monetary penalties should be rational and proportional.

Stay granted by Tribunal or Court in 81% of the cases. Close to 81% of the cases decided by the CCI in the last three and half years have been stayed by either the tribunal or the courts. The top 10 companies by the amount of penalty stayed make up for 78% of the total penalty amount stayed by the tribunal or the court. These companies accounted for Rs 8228.2 crore in penalty out of the total stayed penalty amount of Rs 10454.08 crore. So tribunal and court speed up the enquiry regarding violation of provisions of the Competition Act

Penalty dismissed in 227 cases. Either part or full penalty has been dismissed by the tribunal or court in 227 of the 327 cases. An amount of Rs 1773 crore has been dismissed in the case of Coal India Limited which makes up for 73% of the total dismissed amount. A total penalty amount of Rs 2428 crore has been dismissed by tribunal or court. Competition Appellate Tribunals and Court should take necessary immediate action without delay.

The Competition Appellate Tribunal's order was challenged by the CCI before the Supreme Court. CCI contended that the term "turnover" as used in the Competition Act must always be interpreted as "total turnover" of the enterprise in contravention. So consider relevant turnover. Relevant turnover refers to the entity's turnover pertaining to product and services that have been affected by such contravention.

### **Conclusion**

The Act prohibits all anti-competitive conduct and practices. It prohibits any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services that causes or is likely to cause an appreciable adverse effect on competition. It prohibits all kinds of cartels, vertical or horizontal, including bid rigging. It also prohibits any combination which causes or is likely to cause appreciable adverse effect on competition in the relevant market in India.

### **References**

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