

COMPETITION LAW

UNIT – V

Director General · Penalties
Competition Advocacy · Case Law

20 slides · ss.16, 41–48, 49 and landmark decisions

What this unit covers

1. DG office s.16

2. DG duties s.41

3. Investigation toolkit

4. Dawn raids

5. Penalties map

6. s.27 penalty

7. Excel Crop Care

8. s.43A gun-jumping

9. s.42–45 process penalties

10. s.46 lesser penalty

11. s.48 persons in charge

12. Advocacy s.49

13. Market studies

14. Case law cartels

15. Case law dominance

16. Case law process

17. 2023 settlement

18. Takeaways

19. Revision grid

20. Close

Director General – s.16

The Central Government appoints a DG to assist CCI in investigating contraventions. The office is the Commission's investigative arm, not an independent prosecutor in the US DOJ sense.

Appointment

By the Central Government; additional DGs and offices possible.

Supervision

Functional control of the investigation lies with CCI directions under s.26.

Expertise

Needs economists, CA, lawyers, investigators.

Independence tension

DG must be professionally independent in fact-finding, but legally directed by CCI.

Section 41 – duties of the DG

When so directed, the DG investigates and reports. For that investigation the DG has specified powers of a civil court and, importantly, search-and-seizure style powers by incorporation.

Investigate

Facts of alleged s.3 / s.4 contraventions.

Report

Dated report to CCI with evidence and analysis.

s.41(3) powers

Civil-court powers as in s.36, mutatis mutandis.

Companies Act hook

Search and seizure powers of an inspector have been read in (subject to amendment history) – the practical dawn-raid basis.

Investigation toolkit

Notices

Information, data rooms, emails, bidding files.

Statements

On-oath depositions of officers.

Dawn raids

Unannounced search of premises and devices.

Leniency files

s.46 applicants give the roadmap of the cartel.

Economic analysis

Price charts, bid patterns, cost tests.

Privilege care

Legal-advice privilege claims are a live fight.

Penalty architecture

Chapter VI is a ladder: main infringement penalties, process penalties, gun-jumping, false statement, and leniency.

s.27

Main penalty for s.3 / s.4 after inquiry.

s.43A

Failure to notify a combination.

ss.42–45

Failure to comply, obstruction, false information.

s.46

Lesser penalty (leniency) for cartel members who disclose.

How s.27 penalties are calculated

The statute allows up to 10% of average turnover, or for a cartel a higher alternative linked to profits / duration. Excel Crop Care confined 'turnover' to relevant turnover.

Relevant turnover

Turnover in the products that were the subject of the contravention.

Cartel alternative

Up to 3 times profit or 10% of turnover for each year of the cartel – as worded and amended.

Persons s.48

Officials who consented or were negligent.

Proportionality

Seriousness, duration, role, cooperation, repeat offence.

Process and combination penalties

s.42

Failure to comply with CCI / DG orders – fine and possible extra.

s.43

Non-compliance with DG directions.

s.43A

Gun-jumping – percentage of turnover / assets; used often.

s.44

False statement or omission in combination notice.

s.45

False information generally.

Compensation

s.53N before NCLAT – under-used private follow-on.

Lesser-penalty / leniency

Cartels are secret. Leniency buys information with discounted fines. The first firm in that satisfies the regulations may get up to 100% reduction; later firms get less.

Who

A member of a cartel who makes a full, true disclosure.

Timing

First in usually wins the deepest cut.

Duty

Continuous cooperation till the end.

Risk

If the applicant lies or withholds, the benefit is lost.

Competition advocacy

s.49 is the soft half of the statute. CCI may give opinions on Government policy and shall take measures to promote competition culture.

Policy opinion

Central / State Government may refer a proposed law or policy.

Not binding

But a reasoned opinion is hard to ignore politically.

Culture

Workshops, university moots, sector studies, compliance manuals.

Why it matters

Many Indian markets are distorted by regulation itself, not only by cartels.

Typical advocacy fields

Procurement

Bid design that makes collusion harder.

PSU dominance

Separating sovereign and commercial roles.

Professional bodies

Bar, medical, real-estate association rules.

Digital markets

App stores, search, marketplaces.

Regulation review

Entry barriers dressed as safety standards.

State lists

Alcohol, transport, agricultural marketing.

Cartel case law pack

Excel Crop Care v. CCI (SC 2017)

Relevant turnover; aluminium-phosphide cartel.

Builders Association of India (cement)

Industry-wide price and dispatch coordination.

Beer cartel (CCI 2021 line)

Leniency-driven exposure of a long-running cartel.

Car bearings / zinc / sugar lines

Pattern-plus-communication evidence.

Coordination Committee of Artists (SC)

Collective refusal to deal as s.3.

Public procurement bid-rigging

LPgas / coal transport / tenders – s.3(3)(d).

Dominance case law pack

DLF Ltd.

Unilateral unfair terms in a local housing market.

BCCI

Denial of access; dual role of organiser and commercial player.

Google Android (CCI)

Pre-install mandates on a dominant mobile OS.

Google Play billing (CCI 2022)

Aftermarket / app-store billing rules.

Coal India (SC 2023)

No PSU immunity when acting as an enterprise.

Fast Track / taxi platform cases

When does a new app become dominant?

Process, mergers, jurisdiction

CCI v. SAIL (SC 2010)

s.26(1) not ordinarily appealable.

CCI v. Bharti Airtel (SC 2019)

TRAI first on certain telecom issues.

Google v. CCI (Del)

Investigation of foreign platforms; s.32.

SCM / combination gun-jumping line

s.43A penalties for closing early.

Amazon-Future / combination saga

Standstill and minority deals.

Brahm Dutt (2005)

Constitutional design of CCI; 2007 fix.

Penalties and procedure after 2023

Settlements

End certain non-cartel cases without a full fight.

Commitments

Forward-looking fixes without admission, in suitable matters.

Limitation

Stale information can be shut out.

Turnover definition

Legislative follow-through on Excel Crop Care.

Deal value

Penalty risk now attaches to previously un-notified digital deals.

Leniency plus

Regulations continue to be the real operational code.

How Indian cartel cases are actually proved

Plus factors

Meetings, emails, price announcements after contact.

Leniency statement

The usual smoking gun.

Dawn-raid files

Internal decks titled 'alignment'.

Economic pattern

Parallel price is not enough alone.

Association role

Trade-body as the meeting room.

Defence

Unilateral pricing, cost shocks, weak communication proof.

One-page statutory map for Unit V

If you remember only ten numbers for this unit, remember these.

s.16 / s.41

DG office and investigation duty.

s.27 / s.48

Main penalty and officer liability.

s.43A / s.46

Gun-jumping and leniency.

s.49

Advocacy – the non-penalty half of the Act.

Case-section pairing drill

Excel Crop Care

s.27 relevant turnover.

SAIL

s.26(1) not appealable.

Coal India

s.2(h)+s.4 PSU as enterprise.

Artists Committee

s.3 collective boycott.

Bharti Airtel

sector regulator vs CCI.

Beer / cement cartels

s.3(3)+s.46 leniency.

Key takeaways

- 01** DG investigates on CCI's direction; s.41 + search powers are the teeth.
- 02** s.27 penalties are capped and must use relevant turnover (Excel Crop Care).
- 03** s.46 leniency is how most cartels are broken.
- 04** s.49 advocacy attacks public restrictions that no s.3 order can reach.
- 05** Process cases: SAIL, Bharti Airtel. Substance cases: cement, DLF, BCCI, Google, Coal India.
- 06** 2023 adds settlements, commitments, deal-value and a limitation idea.

End of UNIT – V

Competition Law · All five units complete

20 slides · Light academic edition