



**COUNTRY  
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# **The Legal 500 Country Comparative Guides**

## **India**

# **COMPETITION LITIGATION**

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This country-specific Q&A provides an overview of competition litigation laws and regulations applicable in India.

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# INDIA

## COMPETITION LITIGATION



### 1. What types of conduct and causes of action can be relied upon as the basis of a competition damages claim?

1. In a competition compensation claim in India, the nature of compensation refers to the type of compensation sought by the claimant as a result of the alleged anti-competitive practices of the involved parties. This compensation is aimed at remedying any harm (loss or damage suffered) caused by the anti-competitive behaviour and restoring the claimant to the position they would have been in, had the anti-competitive practices not occurred. The compensation that would be granted would be equivalent to the loss suffered and not in the nature of punitive damages.

2. Any claimant (a government authority, an enterprise, or any person) may claim damages if they demonstrate loss or damage suffered by them as a result of contravention of Section 3 (anti-competitive agreements); Section 4 (abuse of dominance); and/or Section 5 (the merger control provision) by an enterprise. Some examples of such conduct are as follows:

- Anti-competitive horizontal agreements: claims may arise from agreements or arrangements between competitors that have the object or effect of preventing, restricting, or distorting competition. This includes price-fixing, bid-rigging, market allocation, and collusion.
- Anti-competitive vertical agreements: claims may arise from agreements or arrangements between entities at different levels of the supply chain such as tying in arrangements, bundling, exclusive dealing and refusal to supply. Tie-in arrangements and bundling refer to practices where purchase of one product (the tying product) is contingent upon purchasing another product (the tied product). Exclusive dealing and refusal to deal occurs when an entity with sufficient market power uses exclusive arrangements with distributors

or suppliers to exclude competitors from the market.

- Abuse of dominant position: claims can be brought against a dominant enterprise that engages in conduct to exploit its market power, such as predatory pricing, unfair conditions, or denial of market access or engage in exclusionary conduct.
- Mergers: claims may arise out of a loss or damage suffered by an enterprise / person due to a transaction such as a merger or acquisition of shares.

3. Such claims can arise from:

- Any "finding" from India's competition regulator – Competition Commission of India (CCI) or its appellate tribunal, the National Company Law Appellate Tribunal (NCLAT / Appellate Tribunal) of an infringement in the form of an anti-competitive agreement (horizontal or vertical), or
- abuse of dominant position ((a) and (b) are collectively, Infringing Conduct)
- The CCI's order that a transaction/ combination has an appreciable adverse effect on competition (AAEC) and that combination cannot take effect, or has to make certain modifications.
- Contravention of the order(s) of the CCI.
- Contravention of the order(s) of the Appellate Tribunal.

### 2. What is required (e.g. in terms of procedural formalities and standard of pleading) in order to commence a competition damages claim?

1. The claim for competition damages lies before the Appellate Tribunal (currently, the NCLAT). The procedural formalities are provided in the rules for the erstwhile appellate tribunal – Competition Appellate Tribunal (The Competition Appellate Tribunal (Form and Fee

for Filing an Appeal and Fees for Filing Compensation Applications) Rules, 2009). These continue to be applicable to file a claim before the NCLAT as well.

3. Notably, apart from this, there is no specific provision in the Competition Act that grants NCLAT the power to award punitive or exemplary damages.

## 2. To commence the proceedings for a claim:

- The CCI or the NCLAT must have determined that a violation of the Competition Act, 2002 (**Competition Act**) has taken place; or a contravention of the order of the CCI / NCLAT has taken place with respect to the conduct covered in paragraph 2 above.
  - An application must be submitted to the NCLAT including – (i) the relevant findings of the CCI / Appellate Tribunal; (ii) requisite fee; and (iii) the loss or damage that the claimant has suffered.
3. The Competition Act also permits a person (or persons) to file an application on behalf of or for the benefit of people with the same interest. In the claim filed by Bansi Lal Arora Trust and Others,<sup>[1]</sup> against the alleged loss caused by Skipper Towers Pvt. Ltd., (under the erstwhile Monopolies and Restrictive Trade Practices Act, 1969 which was replaced by the Competition Act) there were multiple claimants as party to the compensation application before the NCLAT.

<sup>[1]</sup> *Bansi Lal Arora Trust and Others v. Skipper Towers Pvt. Ltd. and Another*, 2022 SCC OnLine NCLAT 154 (**Bansi**)

## 3. What remedies are available to claimants in competition damages claims?

1. If the Appellate Tribunal determines the case in favour of the claimant, the remedy available is the receipt of payment as compensation for the loss or damages as a result of an enterprise's Infringing Conduct.
2. While the term 'compensation' has not been defined under the Competition Act, in common parlance, compensation is often described as 'something, typically money, awarded to someone in recognition of loss, suffering or injury'. In a legal sense, the Indian Apex Court – the Supreme Court of India (SC) has held that compensation may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss.

## 4. What is the measure of damages? To what extent is joint and several liability recognised in competition damages claims? Are there any exceptions (e.g. for leniency applicants)?

1. A claimant must file a compensation claim supported by evidence that demonstrates the loss or damage a party suffered as a result of any Infringing Conduct or contravention of an order of the CCI or the Appellate Tribunal.
2. In cartel cases, it is likely for all cartel participants to be jointly and severally liable for the infringing conduct. In the absence of any judicial decisions on the compensation provisions, there is no guidance on how the courts will apportion liability between infringing parties. There are no statutory exceptions for leniency applicants and the extent of liability will be determined on a case to case basis.
3. For vertical anti-competitive agreements, it is unclear to what extent the principle of joint and several liability will apply. Rarely has the CCI found more than one party liable for entering into an anti-competitive vertical agreement. Where the CCI finds both/all parties guilty of contravention, and a claimant files an application against both/all parties, it is possible for the NCLAT to apply the same principle of joint and several liability against all these parties.

## 5. What are the relevant limitation periods for competition damages claims? How can they be suspended or interrupted?

1. The Competition Act does not provide a limitation period for filing a competition damages claim. However, the Appellate Tribunal adopts a rule of "reasonable" duration for compensation proceedings to be filed.
2. In the claim filed by Food Corporation of India (FCI), NCLAT had observed that, "mere perusal of the ingredients of the said Section unerringly point out that the said Section does not contemplate a Limitation period for projecting an 'Application'. It is an axiomatic

principle in Law that when no time limit is prescribed, based on the 'Doctrine of Laches' the relevant proceedings ought to have been filed within a reasonable period of time and that failure to do so results in serious prejudice and harm to the concerned party and adversely affects the ability of the said party to defend itself."

3. An application for compensation lies only against a finding of Infringing Conduct by the CCI or NCLAT (on appeal) or an enterprise's failure to comply with orders of the CCI / NCLAT. In cases where a challenge against a finding of Infringing Conduct is pending adjudication before the Appellate Tribunal or the Apex Court, the proceedings for the compensation application is suspended. For example, the compensation claim in Crown Theatre, was kept in abeyance by the NCLAT, pending the finality of the main order (of infringement) from the SC.
4. In case of FCI's application, the NCLAT considered that the compensation application being filed within three years of the CCI's original order attaining finality (in the SC) was considered reasonable and within limitation.

## 6. Which local courts and/or tribunals deal with competition damages claims?

1. The NCLAT (and the erstwhile COMPAT) is the only body empowered by the Competition Act to adjudicate claims for compensation. The orders of the NCLAT regarding compensation applications are open to appeal before the SC.
2. The recently introduced Competition Amendment Act, 2023 (Amendment Act) provides for settlement and commitment mechanisms. Once the provisions relating to settlements and commitments are enforced, any person aggrieved by a 'settlement' decision of the CCI, may also approach the NCLAT for compensation for the damages suffered as a result of these infringements. However, commitment decisions will be immune from compensation claims by third parties.

## 7. How does the court determine whether it has jurisdiction over a competition damages claim?

1. The only court with jurisdiction over compensation applications is the NCLAT (and on appeal - the SC). For a claim for damages,

the NCLAT determines the presence of the following factors to determine whether an application is maintainable - (i) there is Infringing Conduct or contravention of an order of the CCI or NCLAT; and (ii) loss or damage is demonstrated to have been suffered by the applicant.

2. The Competition Act bars the jurisdiction of civil courts to entertain any suit or proceedings in respect of any matter which the CCI or the NCLAT is empowered to determine. Therefore, actions cannot be brought before any other court or tribunal.

## 8. How does the court determine what law will apply to the competition damages claim? What is the applicable standard of proof?

1. In order to pass an order for recovery of compensation, the NCLAT assesses whether any loss or damages is "shown to have been suffered" by the applicant. The legislation places an obligation on the applicant to demonstrate and quantify the loss caused by the anti-competitive conduct. Given that there have been limited decisions and cases before the NCLAT, there remains a lack of clarity in the nature of evidence including the quantification of loss that is required to be exhibited by the applicant.
2. In Ghaziabad Development Authority v. Union of India, the SC opined that the objective underlying assessment of damages is "to place the aggrieved party in the same position, as far as possible, in which it would have been if the contract would have been performed." The SC had also observed that the liable party should also be obliged to compensate for losses directly flowing from its breach.

## 9. To what extent are local courts bound by the infringement decisions of (domestic or foreign) competition authorities?

1. For filing a compensation claim before the NCLAT, establishment of Infringing Conduct or the contravention of an order of the CCI / NCLAT is a prerequisite requirement. The NCLAT is only empowered to inquire into the eligibility and quantum of compensation and is legislatively barred from examining afresh - whether any infringement has taken place.
2. In case of decisions by foreign competition

authorities, these do not have any impact/ binding value/ bearing on Indian courts, including the NCLAT.

**10. To what extent can a private damages action proceed while related public enforcement action is pending? Is there a procedure permitting enforcers to stay a private action while the public enforcement action is pending?**

1. The CCI has the exclusive jurisdiction to adjudicate upon allegations of anti-competitive conduct, render decisions on infringement and enforce them under the Competition Act. Apart from this, only the NCLAT (and subsequently, the SC) has the jurisdiction to hear appeals in matters pertaining to competition law. As there are specialised authorities that deal with anti-competitive conduct, judicial courts do not have the authority to adjudicate on these subject matters. Under the Competition Act, private litigation actions are not permitted, except for filing compensation applications, before the NCLAT. Compensation applications too, may be filed only after the CCI (and, where applicable, the NCLAT and SC) have confirmed the case of an infringement.
2. An application for compensation requires establishment that the applicant has suffered loss / damage due to the Infringing Conduct. Effectively, a private damages action cannot proceed unless the related public enforcement action is complete. In some instances, this could also mean that an appeal against the CCI's order when pending before the NCLAT or against the NCLAT's order pending before the SC would result in the private damages action being stayed. An example of this is the claim in Crown Theatre being kept in abeyance, pending the finality of the order before the SC. Even the NCLAT in FCI observed that the applicant was correct in awaiting the original proceedings (regarding the infringement) to attain finality in the SC before approaching the NCLAT for compensation.
3. The Amendment Act has provided this much needed clarity. One of the amendments states that a claim can be made only after an order of contravention has been found by the Supreme Court on appeal against the original order of the NCLAT in the main proceedings. However, this section has not yet come into

force.

**11. What, if any, mechanisms are available to aggregate competition damages claims (e.g. class actions, assignment/claims vehicles, or consolidation)? What, if any, threshold criteria have to be met?**

1. The Competition Act envisages a mechanism for filing a compensation claim by an individual. The Competition Act also allows a claimant to file a compensation application on behalf of numerous individuals (i.e., as a class action case) if they all have the same interest and have suffered loss/ damage from the same Infringing Conduct. After obtaining permission from the NCLAT, the applicant(s) can make an application for and on behalf of all of these individuals.
2. Apart from the need to obtain the permission of the NCLAT and the prerequisites to file a compensation application (see Q2 for further details), there are no separate thresholds / criteria to be met.

**12. Are there any defences (e.g. pass on) which are unique to competition damages cases? Which party bears the burden of proof?**

1. While there are no unique defences available for competition damages cases, the defendants can argue that their conduct, even though found to be Infringing Conduct, did not cause any loss or damage to the claimant.
2. The claimant is required to demonstrate the loss suffered and provide justification of the quantum of compensation claimed due to the anti-competitive conduct / breach of the Competition Act. The provision uses the phrase "recovery of compensation from any enterprise for any loss or damage shown to have been suffered" clearly indicating that the claimant seeking compensation will have the responsibility of proving its claim with documentary or oral evidence, or both. The burden of proof remains on the claimant and does not shift to the defendant.

**13. Is expert evidence permitted in competition litigation, and, if so, how is it used? Is the expert appointed by the court**

**or the parties and what duties do they owe?**

1. The CCI has the power to call upon experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline, as necessary, to assist the CCI in its conduct of inquiry. However, there is no express provision allowing for the appointment of experts for proceedings relating to competition damages in the NCLAT.

**14. Describe the trial process. Who is the decision-maker at trial? How is evidence dealt with? Is it written or oral, and what are the rules on cross-examination?**

1. The NCLAT – the body with jurisdiction to adjudicate on claims for antitrust compensation – was constituted under the Companies Act, 2013 and currently comprises of 1 chairperson, 4 judicial members and 4 technical members. The final decision of the NCLAT are delivered by way of Judgment.
2. The rules of the NCLAT rely on civil law in India (Companies Act, 2013 and the Code of Civil Procedure, 1908) for the examination of persons and submission of evidence. All forms of evidence (including witness evidence, expert evidence and so on) under the Indian Evidence Act 1872 (Evidence Act) are admissible.
3. Under the Evidence Act, oral evidence in the form of statements made before it by a witness in relation to matters of fact under inquiry and all documents including electronic records produced for the inspection of the Court, are included under scope of evidence. The Evidence Act also delves into the different categories of evidence such as primary and secondary evidence.
4. Further, each party is under a duty to produce all relevant documents that are in its possession or power. The only exception to this is privileged communications, e.g., legal advice or communications between client and legal counsel. Where privilege is claimed, the court may examine the document(s) for the limited purpose of deciding the claim to privilege.
5. There is no certain set of rules that lay down a proper procedure of cross-examination under the Evidence Act. However, the Evidence sets out some guidelines to be followed, i.e.,

Section 138, stipulates that the cross-examination must pertain to and must not deviate from the relevant facts. The adverse party has the freedom to not restrict the questions to those introduced in the examination. Another essential element is that while cross-examining the counsel does not opt for aggressive, demeaning approaches in a manner that a witnesses' reputation is put at stake by referring to unnecessary and irrelevant facts.

**15. How long does it typically take from commencing proceedings to get to trial? Is there an appeal process? How many levels of appeal are possible?**

1. Orders passed by the NCLAT regarding competition damages are appealable to the SC. No compensation claim which has been filed before the NCLAT under the Competition Act has been disposed of. The only compensation claim which has been disposed of in 2022, was initially filed under the erstwhile competition law – Monopolies and Restrictive Trade Practices Act, 1969, and has now been transferred to the NCLAT. However an appeal for the same has not been filed before the SC. Currently, there are only 9 competition damages related cases pending before the NCLAT. No final judgement regarding competition damages under the Competition Act have been passed to date, except in the FCI case where the NCLAT passed an order on the maintainability of the FCI's compensation application.
2. This is the final stage of appeal; the damages claim attains finality when, on appeal, the SC passes a judgement on the merits of the matter.

**16. Do leniency recipients receive any benefit in the damages litigation context?**

1. The Competition Act or the regulations regarding leniency do not contain any provision for reduction in penalty or any benefit for leniency recipients in the context of damages litigation. Whether such benefit can be extended remains to be tested.

**17. How does the court approach the assessment of loss in competition damages**



**cases? Are “umbrella effects” recognised? Is any particular economic methodology favoured by the court? How is interest calculated?**

1. As mentioned in response to query 8 above, the compensation applicant is required to demonstrate that he has suffered a loss or damage resulting from the anti-competitive conduct of the enterprise. While the concept of “umbrella damages” is not explicitly covered under the Competition Act, the language of the provision for claiming compensation is broadly worded. The section allows for ‘any enterprise or any person’ to claim compensation to the extent they can demonstrate loss caused on account of the Infringing Conduct. The language is left open and even indirect sufferers and incidentally affected parties of anti-competitive behaviour can approach the NCLAT under this provision, although this remains to be tested.

**18. How is interest calculated in competition damages cases?**

The Competition Act (including its rules and regulations) do not provide for the manner of calculation of interest in damages claims. Given that there are extremely limited cases and jurisprudence of competition damages in India, there are also no clear guidelines available on interest calculation for damages.

**19. Can a defendant seek contribution or indemnity from other defendants? On what basis is liability allocated between defendants?**

1. The Competition Act is silent on indemnification of a defendant by another defendant. Statutorily, there is nothing that enables or prescribes such indemnification, and this would need to be tested.

**20. In what circumstances, if any, can a competition damages claim be disposed of (in whole or in part) without a full trial?**

1. A defendant cannot seek to dispose of all or part of the action (by obtaining a summary judgement or otherwise), and the final disposal is dependent on the completion of the trial.

**21. What, if any, mechanism is available for the collective settlement of competition damages claims? Can such settlements include parties outside of the jurisdiction?**

1. The Competition Act does not recognize a mechanism for collective settlement of competition damages claim. However, if numerous parties have suffered a loss or damage arising out of the same grievance, then a competition claim can be filed on their behalf by the same claimant. If the NCLAT finds that a few parties are able to demonstrate the loss, the compensation granted to each of those parties can be considered as the collective settlement. Given that there has been limited enforcement of compensation provision so far, there is also no guidance from the Appellate Tribunal’s decisions regarding collective settlement of competition damages claim.

**22. What procedures, if any, are available to protect confidential or proprietary information disclosed during the court process? What are the rules for disclosure of documents (including documents from the competition authority file or from other third parties)? Are there any exceptions (e.g. on grounds of privilege or confidentiality, or in respect of leniency or settlement materials)?**

1. While procedures and trials before the NCLAT are not confidential in nature, submissions filed before the NCLAT are not publicly accessible. Files can be inspected only by parties. If any confidential materials need to be submitted to the bench, these can be furnished separately under sealed cover.

**23. Can litigation costs (e.g. legal, expert and court fees) be recovered from the other party? If so, how are costs calculated, and are there any circumstances in which costs recovery can be limited?**

1. The NCLAT is empowered to direct either party to bear the cost of litigation of the other side if it deems fit. In cases where NCLAT is of the opinion that there has been an abuse of the process of the court, it has the ability to

impose exemplary costs on the defaulting party. Alternatively, it is also open to the claimant to include the litigation costs as actual loss / damage suffered as a part of its claim. The National Company Law Appellate Tribunal Rules, 2016 are silent on the method based on which the NCLAT determines costs.

monetary relief. If the evidence is not easily available/ cannot be demonstrated easily, it may prevent a claimant from making good their loss stemming from Infringing Conduct.

**24. Are third parties permitted to fund competition litigation? If so, are there any restrictions on this, and can third party funders be made liable for the other party's costs? Are lawyers permitted to act on a contingency or conditional fee basis?**

1. The Competition Act does not contain any provision for third party funding. Equally, there is no express bar on it either. Given limited jurisprudence, this is yet to be tested.
2. As per the Advocates Act, 1961, lawyers cannot be engaged under either a "contingency" or a "conditional" fee basis and such arrangements are not legally permissible in India.

**25. What, in your opinion, are the main obstacles to litigating competition damages claims?**

1. The filing of a damages claim is premised on an enterprise's Infringing Conduct. For this, the adjudication of the enterprise's conduct has to attain finality. Litigation at the appellate stages (NCLAT and SC) is often a long-drawn process in India – spanning from two to four years at each stage to dispose of a case.
2. This creates an inordinate delay in each case where an applicant seeks damages. A case in point is FCI. The CCI passed its order finding infringement in 2012. However, it was finally settled in the SC in 2017, after which the Compensation Application was filed in 2019. While the NCLAT passed a judgement that the application is maintainable, it is yet to dispose of the application on merits.
3. When the claim for damages seeks to make good the loss / damage suffered by a party, an inordinate delay in disposal of such cases run the risk of rendering the very point of claiming damages moot.
4. Access to evidence: another key issue is that an applicant is required to demonstrate the loss or damage suffered, in order to seek

**26. What, in your opinion, are likely to be the most significant developments affecting competition litigation in the next five years?**

1. Heightened scrutiny on e-commerce platforms and digital sector: Much like its counterparts around the globe, the CCI continues to investigate practices of technological companies. Last year, the CCI imposed a total penalty of INR 2,273 crores (approx. USD 276 million) on Google in two separate cases involving abuse of dominance in the licensable OS smart mobile devices market and for its Play Store policies. In the same year, the CCI imposed a total penalty of INR 392 crores (approx. USD 47 million) on MakeMyTrip (online travel agency) and OYO (accommodation provider) for indulging in unfair practices including imposition of exclusivity conditions on hotels. Apart from this, the CCI is currently investigating against Google, Apple, food aggregators – Zomato and Swiggy as well. We expect to see business stakeholders file compensation applications once the appellate proceedings are complete.
2. Compensation claims in settlement decisions. The Amendment Act clarifies that compensation claims may be filed pursuant to settlement orders. Once the provisions on settlements are enforced, absent an appeal mechanism, we expect greater traction in compensation applications further to settlement decisions.
3. Uptick of leniency applications: The leniency regime appears to have been a success, given that the CCI has investigated and passed a number of orders pursuant to leniency applications. Over the past year (i.e., 2022), the CCI has passed fourteen (14) orders finding a contravention of the Competition Act. Out of these, approx. 35% (five cases ) involved successful leniency applications. and the CCI did not impose any monetary penalty in only one of these five cases. Considering that under the leniency regime, a leniency applicant voluntarily approaches the CCI to disclose the violation of the provisions of the Competition Act, there is a higher likelihood of



Infringing Findings Conduct being settled  
faster. If the CCI finds that the conduct has

indeed been anti-competitive, this is likely to  
increase the compensation damages claims.

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