



Domain Expertise and Appellate Review in the Indian Competition Regime

What the reasoning patterns of CCI and NCLAT tell us about appellate design in digital competition cases

Presented by

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About me

- NIST Fellow
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- Research focuses on consumer autonomy and freedom of choice as the foundation of contestability and market intelligence



Two Institutions, Two Design Philosophies

Competition Commission of India

INSTITUTIONAL DESIGN

Members: economics, trade, competition, commerce, law, business (s.8(2), Competition Act)

Embedded DG wing: independent market analysis, data collection, economic assessment

Jurisdiction: exclusively competition matters



appeals

National Company Law Appellate Tribunal

INSTITUTIONAL DESIGN

Members: judicial, technical (s.410, 411, Companies Act)

No in-house capacity for economic analysis

Jurisdiction: Companies Act, IBC, Competition Act, NFRA

Is the appellate design adequate for competition matters?

Scope: Digital Platform Markets

The hardest test for appellate review

Digital platform cases present one of the most analytically demanding environment for competition adjudication. The theories of harm require precisely the kind of economic reasoning that the institutional design gap would most affect.

Network effects

Multi-sided dynamics

Ecosystem leveraging

THE CORPUS

7 cases

35 issue pairs

70 observations

CASES STUDIED

Google Android (Umar Javeed v. Google)

Google Play Billing (Alphabet v. CCI)

WhatsApp Privacy (Suo Motu, 2021)

Vinod Gupta v. WhatsApp

Meru/Fast Track v. ANI Technologies (Ola)

Samir Agrawal v. ANI Technologies

AIOVA v. Flipkart

How the Study Works

A biaxial mapping of reasoning form



Economic-Analytic (EA) Axis

Measures engagement with economic evidence, operational use of economic concepts, effects and counterfactual reasoning, remedy justification logic, and epistemic deference to CCI/DG



Legal-Doctrinal (LD) Axis

Measures normative framing, rights-based reasoning, doctrinal formalism, categorical/binary reasoning, and formal proportionality or legality review

LD ↑

Doctrine-
dominant

**Deep hybrid
reasoning**

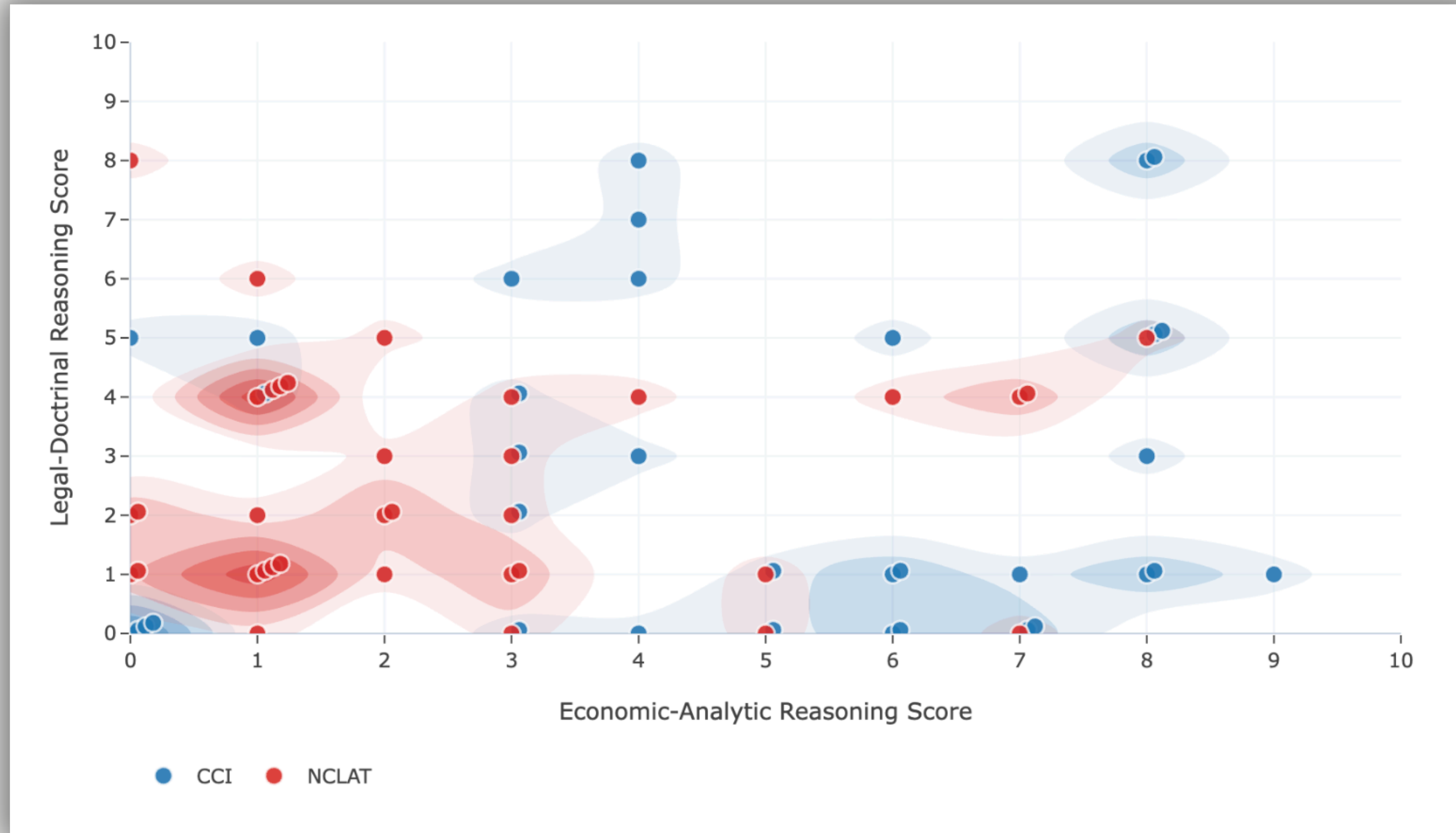
**Thin
reasoning**

Economics-
dominant

EA →

Each issue scored independently on both axes (0-10). Same issue compared across CCI and NCLAT orders.

What the Data Shows



What the Data Shows

A

Economic reasoning compresses at appeal

CCI mean EA: 4.66 vs NCLAT mean EA: 2.51 | Lower in 25/35 pairs | Avg. reduction: -2.14

Driven by reduced use of economic concepts and attenuated counterfactual reasoning. Epistemic deference is observed, but substantive economic engagement declines.

B

Legal-doctrinal reasoning does not compensate

LD scores recombine rather than intensify. Doctrinal formalism rises, but normative framing, proportionality, and rights-based reasoning decline.

NCLAT's modal quadrant: low EA/low LD (19/35 issues). Points to thin review instead of structured appellate scrutiny.

C

The gap widens where the stakes are highest

Google Android: CCI EA 6.9 vs NCLAT EA 1.6 (delta: -5.3). The most complex multi-market leveraging theories show the most severe compression.

Might indicate increased deference in complex cases.

Four Proposals for Reform

01 Economic Capacity



at NCLAT

Competition benches, in-house economists, ad-hoc domain experts

02 Reviewable Economic Reasoning at CCI



Structured economic issues matrix in CCI orders to enable better and easier review

03 Structured Scrutiny



Protocol

Differentiated review intensity with minimum engagement requirements

04 Time-Sensitive Procedural Design



Fast-track docketing and structured stay principles for digital market remedies



Competition benches

At least one member with demonstrable competence in competition economics, treated as a functional requirement for competition appeals

Current gap: s.411 of the Companies Act does not list economics, competition law, or market analysis as qualification areas for NCLAT technical members

In-house economic analysis cell

2-4 staff economists producing neutral bench memoranda that decompose the economic architecture of CCI findings into a format the bench can interrogate

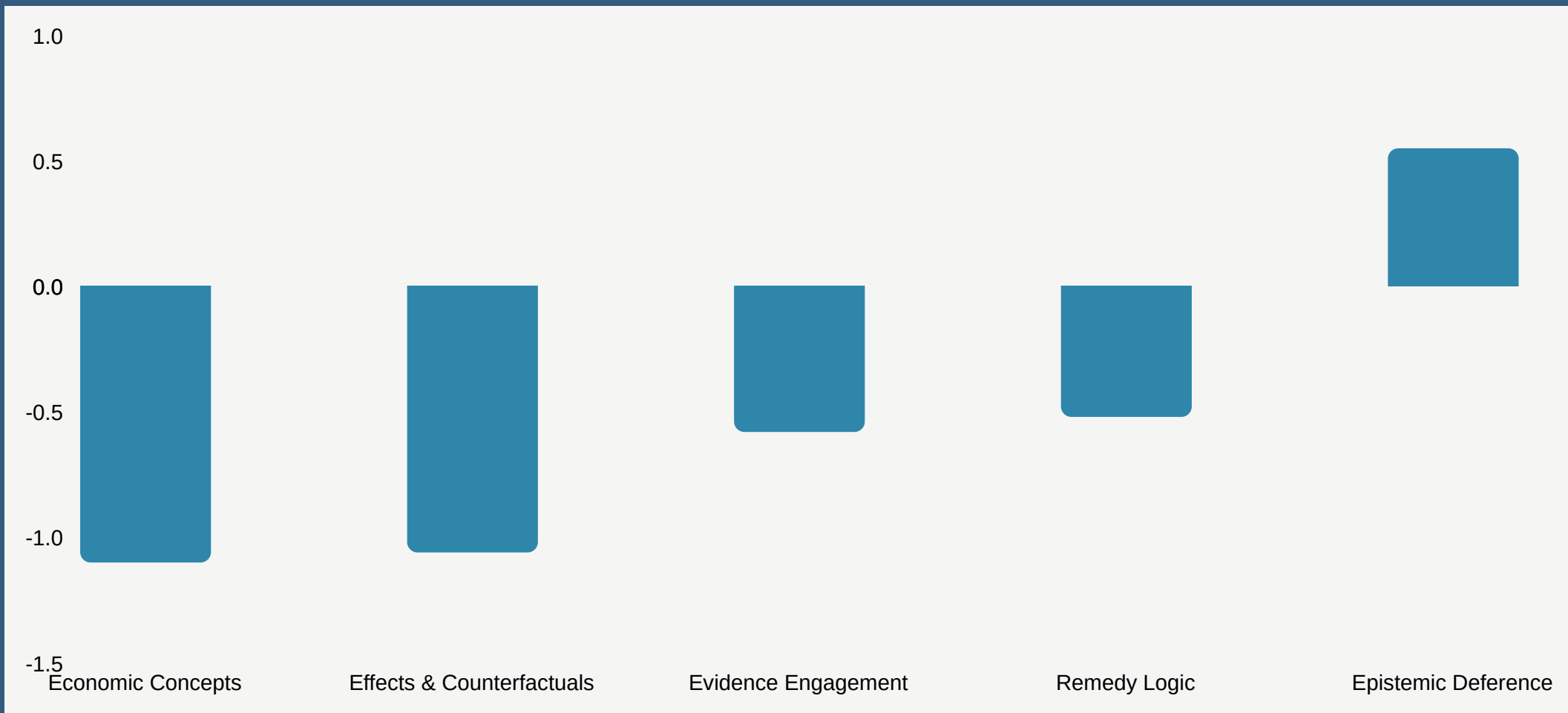
No Indian appellate tribunal currently has embedded economic research staff. This is a new institutional function

Ad-hoc domain experts

For cases involving complex econometrics, algorithmic conduct, or multi-market leveraging theories. Role confined to technical elucidation, not merits determination

Distinct from amicus curiae (which provides legal perspective). Role more extensive than that of an expert testimony.

Why: The Verification Gap



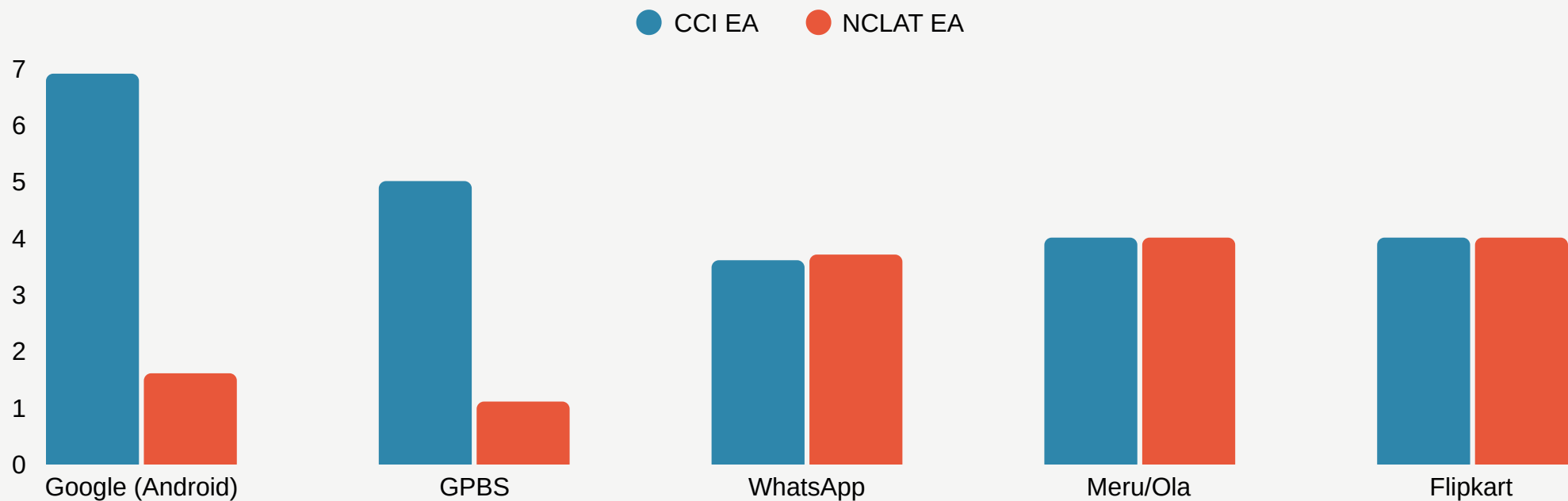
Deference Without Verification

Epistemic deference is the only EA sub-dimension that increases at appeal (+0.55). All four substantive dimensions decline.

The NCLAT formally acknowledges CCI expertise but does not engage with how that expertise was exercised.

The SC framework (WBERC, Excel Crop Care) presupposes engagement sufficient to detect perversity or evidentiary gaps.

The gap widens where the stakes are highest



Google (Android)

Delta: -5.3

Complex leveraging across Play Store, Android OS, Search, Chrome, YouTube. The most analytically demanding case shows the most severe compression.

Reviewable Economic Reasoning at CCI

Structured economic issues matrix

An annexure to CCI final orders isolating, for each issue, four elements:

Theory of harm

Key evidence

Counterfactual

Key assumptions

Clear description of methods and assumptions

Where the investigation relies on econometric or data-driven analysis, a separate statement of methods used, assumptions made, and limitations acknowledged should accompany the findings. Standard in academic and policy research, can be really helpful in adjudication as well.

HOW IT WILL WORK

CCI orders already contain economic reasoning.

- The problem, however, is in structure. Economic analysis is embedded across hundreds of paragraphs without a distinct inferential architecture.
- When the NCLAT encounters a 200-page order with analysis woven throughout the narrative, the appellate default is summarisation rather than scrutiny.

Differentiated review intensity with a minimum engagement requirement

Law & jurisdiction

Statutory interpretation, competence, procedure, limitation

Correctness review

Economic fact-finding & technical inference

Market definition evidence, multi-sided constraints, effects mechanisms, counterfactual plausibility

Error-correction review

NCLAT must state what economic reasoning it accepted, found deficient, and why. Currently no such procedural requirement exists.

Remedy & penalty calibration

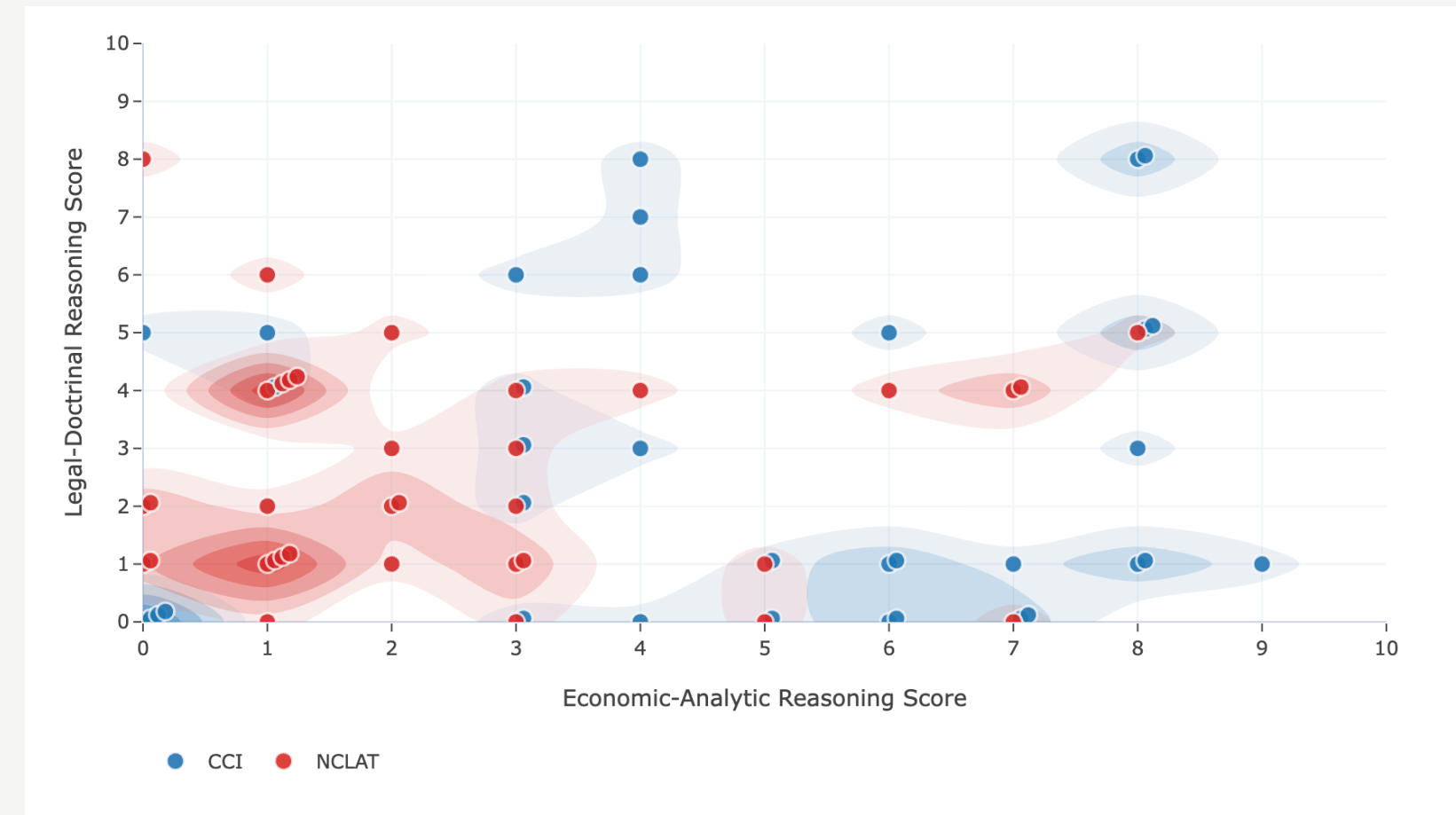
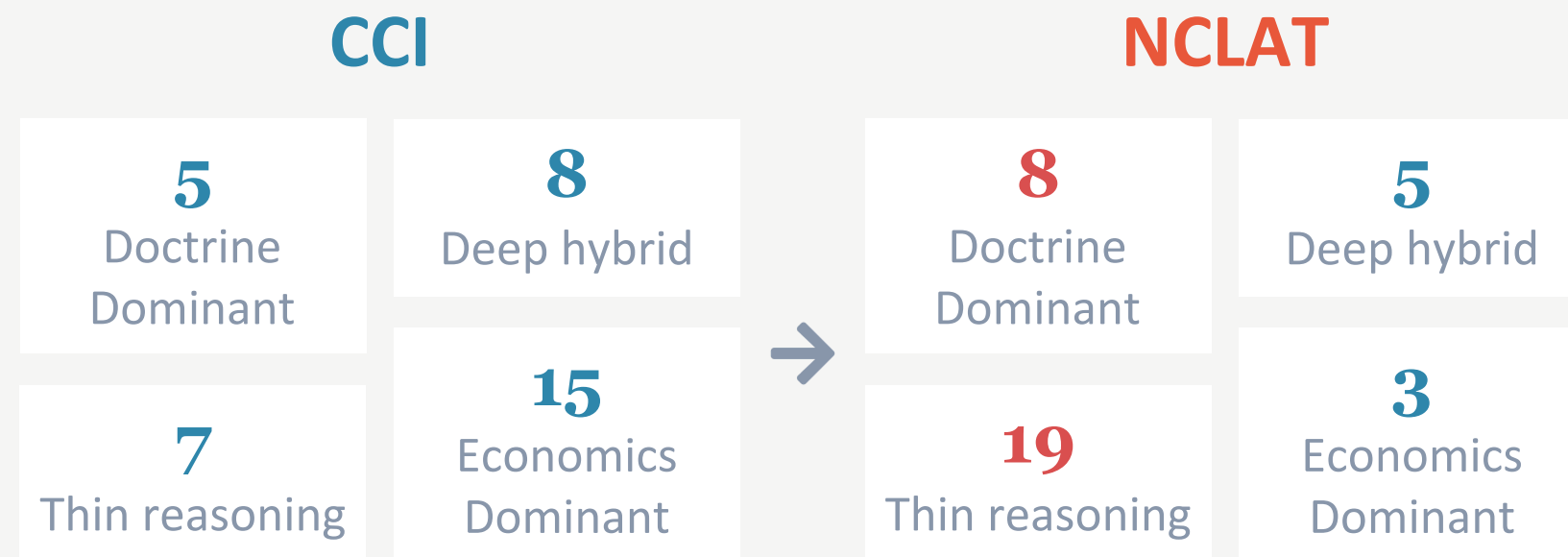
Penalty computation, behavioural/structural remedies, proportionality of intervention

Legality + proportionality

How is this different from the existing structure?

The SC's jurisprudence (WBERC, PTC India, Excel Crop Care) establishes the principle of calibrated deference but not the procedure. It states the boundaries of review, not the methodology. This protocol fills that gap by prescribing a minimum engagement floor for economic questions and creating a feedback loop back to CCI.

Why: The Thin Review Problem



What the quadrants reveal

If the NCLAT were functioning as a structured appellate reviewer, its modal position would be low EA / high LD (reduced economic reconstruction + intensified doctrinal scrutiny). Instead, the modal quadrant is low EA / low LD: **thin on both axes.**

The LD sub-dimensions explain how: doctrinal formalism and categorical reasoning increase (+0.55, +0.19), but normative framing (-0.52), rights-based reasoning (-0.35), and proportionality review (-0.42) decline. Legal categories structure the analysis, but the evaluative depth needed for appellate review of complex economic regulation is not generated.



Fast-track docketing

- Dedicated category for digital platform appeals where remedies have a time-sensitive market-corrective function.
- Network effects and tipping dynamics mean delayed intervention may be functionally equivalent to no intervention.

Structured stay principles

- Stay applications must explicitly consider: time-sensitivity of identified harm, reversibility of remedy, risk of market tipping during pendency, and balance of convenience.
- Currently governed by general Tribunal rules with no competition-specific or digital-market-specific framework.

Key Takeaways



1 Calibration instead of convergence

The NCLAT need not become a second CCI. But it must be equipped to verify whether economic reasoning is adequate, coherent, and responsive to the evidence.

2 The gap is structural

Reasoning differences are consistent across cases, issue types, and sub-dimensions, reflecting institutional design choices rather than individual adjudicator capabilities.

3 Digital markets will only raise the bar

Algorithmic pricing, ecosystem leveraging, and data-driven market power demand appellate oversight that evolves to match the analytical complexity.



Thank you
