

Domain Expertise and Appellate Review in the Indian Competition Regime

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Chapter 1: Introduction

The expansion of India's regulatory state² has increasingly relied on specialised adjudicatory institutions to decide technically complex economic disputes.³ Across sectors such as electricity, telecommunications, securities, and competition, this model has relied on regulatory bodies equipped with domain-specific investigative and analytical capacity, and has layered above them appellate forums tasked with reviewing their decisions. This institutional architecture rests on a foundational premise: that technically demanding economic disputes require adjudicators capable of engaging with the substance of economic reasoning, rather than merely its legal form.

Competition law represents one of the most analytically demanding⁴ applications of this regulatory model. It requires adjudicators to evaluate market structures, assess competitive effects, and construct counterfactual scenarios. The Competition Commission of India (CCI), established under the Competition Act, 2002, functions as the primary regulator responsible for investigating and adjudicating anti-competitive conduct. It operates with the support of an embedded investigative wing, the office of the Director General (DG), which conducts detailed economic and factual inquiries that inform the Commission's findings. The National Company Law Appellate Tribunal (NCLAT) serves as the principal appellate body, hearing challenges to CCI's orders, with further appeals lying to the Supreme Court on questions of law. The NCLAT assumed this role following the dissolution of the Competition Appellate Tribunal (COMPAT) through the Finance Act, 2017, as part of a broader consolidation of tribunal functions across multiple economic statutes.

This institutional arrangement raises a structural question. The CCI and the NCLAT differ not only in jurisdictional function but in institutional design, with the former constituted as an economist-embedded regulatory body, and the latter operating as an appellate tribunal spanning corporate, insolvency, and competition matters. Whether this difference in design translates into

² A Singh, *India's Regulatory Shift: An Examination of Five Agencies of the Post-liberalisation Era*, Centre for Policy Research (2023), 5. https://cprindia.org/wp-content/uploads/2023/02/WP_INDIA-REGULATORY-SHIFT_02-Feb-23.pdf

³ R Singh, "Imperfect Alternatives: Economic Evidence in the Indian Regulatory Landscape, a Review of Courts, Regulators, and the Scrutiny of Economic Evidence: Comparative Perspectives by Despoina Mantzari," *National Law School Business Law Review* 9 (2023): 189.

⁴ D. Crane, "Technocracy and Antitrust", *Texas Law Review* 86 (2008): 1159. <https://heinonline.org/HOL/P?h=hein.journals/tlr86&i=1172>

observable differences in how competition questions are reasoned through at each institutional level is a question that has attracted practitioner attention and policy discussion,⁵ but has not been subjected to systematic empirical analysis.

This study addresses that gap. It examines how domain expertise, understood as the capacity to engage with economic evidence, construct analytical frameworks, and integrate doctrinal standards with market analysis, is expressed in the reasoning of CCI and NCLAT orders. Rather than evaluating outcomes or the correctness of decisions, the study focuses on reasoning form, examining how identical competition issues are articulated, analysed, and justified at the regulatory and appellate levels. The empirical scope is limited to competition cases involving digital platform markets, which present particularly demanding analytical environments due to features such as network effects, multi-sided interactions, and evolving theories of competitive harm. Through a structured comparison of reasoning patterns across institutions, the study seeks to contribute an empirical foundation to ongoing debates about appellate review, institutional capacity, and the architecture of competition adjudication in India.

1.1. Legislative Origins and Institutional Rationale of the NCLAT

The creation of the National Company Law Appellate Tribunal (NCLAT) represented a major institutional shift in India's corporate adjudication framework. It reflected a broader movement away from a fragmented, court-centric dispute resolution system toward a specialised tribunal-based model designed to handle complex economic regulation.⁶ Established on 1 June 2016 under the Companies Act, 2013, the NCLAT functions as an expert appellate body overseeing decisions of several economic regulators and tribunals. Its institutional design aims to combine judicial reasoning with technical expertise to adjudicate complex corporate and financial disputes more efficiently than traditional courts.

The origins of this tribunal system lie in the structural weaknesses of the earlier regime under the Companies Act, 1956. Under that framework, High Courts exercised jurisdiction over many

⁵ C Lakshmikumar, N Sandeepan & R Zaveri, "Competition Law Adjudication at the NCLAT: Promises and Challenges" in *The State of Tribunals Report*, ed. By R Singh and BS Surya Prakash, (Daksh India, 2025), 88-89. <https://www.dakshindia.org/wp-content/uploads/2025/09/State-of-Tribunals-PDF-Digital.pdf>

⁶ See generally, Daksh, *The State of Tribunals Report*. See also *S.P. Sampath Kumar v. Union of India*, 1987 AIR 386, highlighting the need for tribunals to address case pendency and backlogs.

company law matters, including winding-up proceedings and management disputes. Although the Company Law Board (CLB) was introduced to alleviate the burden on courts, it proved inadequate due to limited benches and persistent jurisdictional overlap with civil courts. In parallel, corporate distress cases were handled by the Board for Industrial and Financial Reconstruction (BIFR) and its appellate body, the Appellate Authority for Industrial and Financial Reconstruction (AAIFR). This created a fragmented system in which companies could face parallel proceedings before multiple institutions, resulting in extensive delays and inconsistent outcomes.

This institutional evolution and its associated limitations are summarised below.

Era	Primary Authority	Nature of Jurisdiction	Key Limitations
1913–1956	High Courts	Exclusive Judicial	Court-centric, generalist oversight
1956–1964	High Courts	Exclusive Judicial	High pendency, procedural delays
1964–2016	Company Law Board (CLB)	Quasi-Judicial	Limited benches, lack of winding-up power
2016–Present	NCLT & NCLAT	Specialist Quasi-Judicial	Consolidated, multi-regulator oversight

A decisive reform proposal emerged from the Eradi Committee (2000),⁷ which examined insolvency and corporate restructuring laws in India. After studying international practices, the committee recommended consolidating the functions of the CLB, BIFR, and the company jurisdiction of High Courts into a unified tribunal structure consisting of the National Company Law Tribunal (NCLT) and an appellate body, the NCLAT. The objective was to streamline

⁷ Justice V. Balakrishna Eradi, *Report of the High Level Committee on Law Relating to Insolvency and Winding Up of Companies* (New Delhi: Government of India, 2000, <https://ibbi.gov.in/uploads/resources/July%202000,%20Eradi%20Committee%20Report%20on%20Law%20relating%20to%20Insolvency%20and%20winding%20up%20of%20Companies.pdf>)

adjudication and dramatically reduce delays in corporate resolution processes.⁸ The committee argued that a specialised tribunal could reduce winding-up timelines from nearly 20 years to approximately two years by centralising jurisdiction and improving procedural efficiency. These recommendations led to the Companies (Second Amendment) Act, 2002, which first introduced statutory provisions for the NCLT and NCLAT.⁹ These changes were later incorporated into the Companies Act, 2013, which ultimately provided the operational framework for the NCLAT.

The NCLAT was deliberately designed as an expert-led body combining judicial members with technical members who possess extensive experience in areas such as finance, industrial management, or restructuring. This multidisciplinary structure allows the tribunal to evaluate both legal arguments and complex economic evidence in disputes involving mergers, insolvency, corporate governance, and market regulation.

The NCLAT’s jurisdiction expanded significantly after the Finance Act, 2017, which dissolved the Competition Appellate Tribunal (COMPAT) and transferred its appellate functions to the NCLAT. As a result, the tribunal now hears appeals from the Competition Commission of India (CCI) alongside its original corporate and insolvency jurisdiction. Over time, it has also become the appellate forum for decisions of the Insolvency and Bankruptcy Board of India (IBBI) and the National Financial Reporting Authority (NFRA).

The shift in institutional design and its implications for jurisdiction and performance are outlined below.

Feature	COMPAT (2009–2017)	NCLAT (Post-2017)
Institutional Focus	Exclusive competition law appellate tribunal	Multi-sector appellate tribunal (Companies Act, IBC, Competition Act, NFRA)

⁸ Ministry of Corporate Affairs (India), “Setting up of NCLT and NCLAT,” PIB, 19 March 19, 2012, <https://archive.pib.gov.in/newsite/PrintRelease.aspx?relid=81235>

⁹ See Sections 10FB, 10FR, The Companies (Second Amendment) Act, 2002.

Expertise Profile	Developed strong competition law specialisation in practice	Members drawn from broader corporate, financial, and administrative backgrounds
Caseload Pressure	Limited subject-matter jurisdiction	Heavy caseload due to insolvency and corporate appeals
Case Clearance (Average) Rate ¹⁰	Moderate (~ 47.4%)	Low (~ 17.8%)
Jurisprudential Orientation	Competition-economics intensive reasoning	Mixed approach shaped by corporate and insolvency jurisprudence

Today, the NCLAT functions as a central appellate oversight body within India’s economic regulatory system. While the consolidation of multiple jurisdictions under one tribunal was intended to improve efficiency and regulatory coherence, it has also raised concerns about case backlogs and the dilution of specialised expertise, particularly in competition law.

1.2 Institutional Design Contrasts: CCI, COMPAT, and NCLAT

The statutory framework governing the Competition Commission of India (CCI), the Competition Appellate Tribunal (COMPAT), and the National Company Law Appellate Tribunal (NCLAT) prescribes distinct membership profiles, and these profiles offer a window into the kind of reasoning each body was designed to produce. A comparison of the sanctioned composition and qualification requirements reveals a progressive distancing from competition-specific economic expertise as one moves from the primary regulator to the current appellate forum.

The Competition Commission of India, under Section 8 of the Competition Act, 2002, consists of a Chairperson and up to six members, each required to possess at least 15 years of professional experience in fields that include international trade, economics, business,

¹⁰ See State of Tribunals Report at 89.

commerce, law, finance, accountancy, management, industry, public affairs, or competition matters. The breadth of this list is itself significant. It reflects a legislative recognition that competition adjudication requires a multidisciplinary body capable of evaluating economic evidence, market dynamics, and commercial conduct alongside legal standards. The Commission is further supported by the office of the Director General, which conducts independent investigations involving market analysis, data collection, and economic assessment. This embedded investigative capacity means that the CCI does not depend solely on the submissions of parties for its economic reasoning; rather, it generates and evaluates economic evidence through its own institutional machinery.

The Competition Appellate Tribunal (COMPAT), which functioned from 2009 to 2017 under Sections 53A to 53T of the Competition Act, was designed as a dedicated appellate body for competition matters. It consisted of a Chairperson, who was required to be a sitting or former Supreme Court judge or the Chief Justice of a High Court, and not more than two members. Critically, members were required to possess no less than 25 years of professional experience in areas including competition matters, competition law and policy, international trade, economics, business, commerce, law, finance, accountancy, or management. The statutory language explicitly foregrounded competition expertise, and the tribunal's exclusive jurisdiction over competition appeals meant that its members developed sustained familiarity with the economic and doctrinal dimensions of antitrust adjudication over time.

The dissolution of COMPAT and the transfer of its appellate functions to NCLAT through the Finance Act, 2017, altered this institutional equation. The NCLAT, constituted under Section 410 of the Companies Act, 2013, consists of a Chairperson and up to 11 judicial and technical members. The Chairperson must be a sitting or former Supreme Court judge or the Chief Justice of a High Court. Judicial members are required to have served as High Court judges or as judicial members of NCLT for at least five years. Technical members must possess 25 years of professional experience in areas like industrial finance, industrial management, industrial reconstruction, investment, accountancy, labour matters, or disciplines related to the management, conduct of affairs, revival, rehabilitation, and winding up of companies. The qualification criteria, drawn from the Companies Act's orientation toward corporate restructuring

and insolvency, do not include economics, competition law, competition policy, or market analysis as specified areas of expertise.

This statutory design has practical implications for competition appeals. The NCLAT's technical members are selected for competence¹¹ in corporate and financial administration rather than in the economic analysis of market behaviour, competitive effects, or regulatory intervention. Unlike COMPAT, which operated with a narrow and competition-focused caseload, NCLAT adjudicates appeals across the Companies Act, the Insolvency and Bankruptcy Code, competition law, and matters arising from the National Financial Reporting Authority. Competition appeals constitute a small fraction of the NCLAT's overall docket, limiting the extent to which its members can develop the kind of sustained, domain-specific familiarity with competition economics that characterised COMPAT's institutional practice.

None of this implies that the NCLAT is institutionally incapable of adjudicating competition appeals. Appellate review does not require the appellate body to replicate the regulator's analytical function; it requires the capacity to scrutinise the regulator's reasoning for adequacy, coherence, and legal soundness. The question, however, is whether the institutional conditions under which the NCLAT operates—including member expertise profiles, caseload composition, and the absence of dedicated economic support—are reflected in the form and depth of reasoning that its competition orders exhibit. It is this question that the present study seeks to examine empirically.

1.3 Doctrinal Frame for Appellate Review of Expert Regulators

Integrating economic reasoning into legal adjudication can be challenging. One key issue is how economic evidence is presented and tested in a manner that aligns with legal standards. Administrative proceedings before the CCI allow for expert reports (for example, economists may submit market studies or data analyses to the Commission). The CCI's orders often reflect engagement with this evidence by summarising data, applying economic tests, or citing economic expert opinions. When such orders move to appeal, the question arises whether the appellate tribunal should reweigh the economic evidence or primarily check for legal errors.

¹¹ See generally *Union of India v. R. Gandhi and Ors.* (2010) 11 SCC 1.

Different jurisdictions approach this issue differently.¹² In the United States, courts have developed significant expertise over time. Even so, appellate courts typically defer to agency factual findings when supported by substantial evidence and avoid second-guessing reasonable economic analyses by agencies (this, in part, due to deference doctrines and recognition of agency expertise). In contrast, the European Union's General Court undertakes an in-depth review of European Commission competition decisions, including close scrutiny of the Commission's economic reasoning.

The Indian Supreme Court's jurisprudence on appellate review of expert regulators, across the electricity, securities, and competition sectors, so far reflects a coherent, albeit minimal, institutional philosophy of structured deference, rather than either blind deference or unconstrained merits substitution. In *WBERC v. CESC Ltd.* (2002),¹³ the Court established that a High Court exercising appellate jurisdiction over a tariff-setting commission cannot simply re-determine the tariff by substituting its own assessment, and that interference is warranted only where findings are perverse, unsupported by evidence, or based on legal error. In *PTC India Ltd. v. CERC* (2010),¹⁴ the Court affirmed that even an appellate tribunal possessing broad merits jurisdiction, such as APTEL, remains structurally confined within the statutory scheme and cannot adjudicate the constitutional validity of regulations, which is reserved for judicial review. In competition matters, the Supreme Court's findings have been peripheral to the issue at hand. In *Excel Crop Care v. CCI* (2017),¹⁵ the Court intervened in the methodology for penalty computation, but carefully anchored that intervention in the text of Section 27(b) rather than in independent economic preference, illustrating that merits review is permissible only when tethered to identifiable legal standards.

1.4 Problem Statement and Research Objectives

This study aims to examine the nuances underlying these observations and analyse how they are reflected in adjudication. It does so by focusing on one specific and observable dimension of this broader claim: whether differences in institutional capacity or expertise are reflected in the

¹² See OECD Secretariat, *The Standard of Review by Courts in Competition Cases - Background Note*, (OECD, 2019), [https://one.oecd.org/document/DAF/COMP/WP3\(2019\)1/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3(2019)1/en/pdf)

¹³ *WBERC v. CESC Ltd.*, AIR 2002 SC 3588.

¹⁴ *PTC India Ltd. v. CERC*, AIR 2010 SC 1338.

¹⁵ *Excel Crop Care Ltd. v. Competition Commission of India*, (2017) 8 SCC 47.

reasoning adopted by the appellate tribunal, the NCLAT, as compared to that of the primary regulator, the CCI.

To explore this question, the study analyses the reasoning contained in orders issued by both the CCI and the NCLAT. Rather than evaluating outcomes or the correctness of decisions, the focus is on how issues are reasoned through at each institutional level. By comparing how the same issues are addressed by the regulator and subsequently revisited on appeal, the study seeks to identify whether systematic differences emerge in the manner in which competition questions are analysed and justified. More specifically, it assesses whether differences in institutional structure correspond to observable differences in adjudicatory reasoning, and what such patterns may imply for the functioning of competition appeals within India's contemporary regulatory framework.

Chapter 2: Methodology

The preceding discussion situates the study within a broader institutional concern: whether the appellate institutional structure governing competition law adequately preserves domain expertise when the CCI's decisions are reviewed. Directly measuring expertise poses methodological challenges, as institutional competence cannot be inferred solely from outcomes, reversal rates, or case durations. Overreliance on such metrics risks detaching conclusions from context. Accordingly, a qualitative approach was adopted, focusing on one of the primary ways expertise in adjudication is expressed—namely, the reasoning mentioned in the order. This is understood as the broader pattern in which evidence is engaged with, how economic arguments are evaluated, and how legal conclusions are justified. The reasoning reflected in the orders of the CCI and the NCLAT thus provides an observable and comparable site through which differences in domain engagement may be examined.

The study adopts a reasoning-based analytical framework that examines how identical competition issues are articulated and analysed at the two institutional levels. The underlying premise is that domain expertise manifests in identifiable reasoning practices, including engagement with economic evidence, use of analytical tools, treatment of counterfactuals, and integration of doctrinal standards with market analysis.

2.1 Unit of Analysis

The unit of analysis is the issues identified and addressed in appellate reasoning. Issues are identified primarily from the NCLAT's appellate reasoning, as this is where CCI's economic reasoning is accepted, reframed, deferred to, or displaced. This issue-centric approach allows the study to abstract from case-specific factual noise, identify recurring reasoning patterns across sectors and cases, and compare institutional approaches to the same issue.

2.2 Corpus and Institutional Focus

To maintain analytical focus, the study narrows its empirical scope to competition cases involving digital platform markets. Digital markets are particularly demanding analytical environments due to features such as network effects, multi-sided interactions, and evolving theories of competitive harm. These characteristics make them an appropriate setting to examine

how appellate review engages with economically complex regulatory findings. Accordingly, all decided digital platform cases reviewed by both the CCI and the NCLAT within the study period are examined, and the issues arising in these cases are systematically coded and compared.

The corpus consists of 70 issues (35 pairs) drawn from seven cases relating to digital platforms, spread across 14 orders in which both the CCI and the NCLAT issued reasoned decisions.¹⁶ These cases constitute the full set satisfying both the selection criteria:

1. Cases related to digital platforms
2. Cases having reasoned final orders from both the CCI and the NCLAT

¹⁶ The cases are: *Fast Track Call Cab Pvt. Ltd. v. ANI Techs. Pvt. Ltd.*, Case Nos. 6 & 74 of 2015, Competition Comm'n of India, Order (19 July 2017), <https://www.cci.gov.in/images/antitrustorder/en/62015-and-7420151652259825.pdf>; *Fast Track Call Cab Pvt. Ltd. v. Competition Comm'n of India*, Competition Appeal (AT) No. 19 & 20 of 2017, Nat'l Co. Law App. Trib., Order (7 January 2022), https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDEtMDcvY291cnRzLzOvZGFpbHkvMTY0MTU1MDgwODM1MDk5MjI0ODYxZDgxM2O4YTlwYTUyYucGRm; *In re Google Play Billing Policies*, Case No. 7, 14 & 35 of 2018, Competition Comm'n of India, Order (25 October 2022), <https://www.cci.gov.in/images/antitrustorder/en/order1666696935.pdf>; *Google LLC v. Competition Comm'n of India*, Competition Appeal (AT) No. 04 of 2023, Nat'l Co. Law App. Trib., Order (28 March 2025), https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDMtMjg1Y291cnRzLzEvZGFpbHkvMTc0NDgwNzE1OTk1Mzk0MjI1NzY3ZmZhNGY3MmQ1YzEucGRm; *In re Updated Terms of Service and Privacy Policy for WhatsApp Users*, Suo Motu Case No. 01 of 2021 with Case No. 05 & 30 of 2021, Competition Comm'n of India, Order (18 November 2024), <https://www.cci.gov.in/images/antitrustorder/en/order1732001619.pdf>; *WhatsApp LLC v. Competition Comm'n of India*, Competition Appeal (AT) No. 01 of 2025, Nat'l Co. Law App. Trib., Order (4 November 2025); *Vinod Kumar Gupta v. WhatsApp Inc.*, Case No. 99 of 2016, Competition Comm'n of India, Order (June 1, 2017), <https://www.cci.gov.in/images/antitrustorder/en/9920161652338476.pdf>; *Vinod Kumar Gupta v. Competition Comm'n of India*, Competition Appeal (AT) No. 13 of 2017, Nat'l Co. Law App. Trib., Order (2 August 2022), https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDgtMDIvY291cnRzLzIvZGFpbHkvMTY1OTQzOTMzNjE0NjQ1OTMyNDY2MmU5MDhlODQxOWZjLnBkZg==; *Umar Javeed v. Google LLC*, Case No. 39 of 2018, Competition Comm'n of India, Order (20 October 2022), <https://www.cci.gov.in/images/antitrustorder/en/order1666344260.pdf>; *Google LLC v. Competition Comm'n of India*, Competition Appeal (AT) No. 01 of 2023, Nat'l Co. Law App. Trib., Order (29 March 2023), https://regmedia.co.uk/2023/03/30/google_march_29_india_appeal_order.pdf; *Samir Agrawal v. ANI Techs. Pvt. Ltd.*, Case No. 37 of 2018, Competition Comm'n of India, Order (6 November 2018), <https://www.cci.gov.in/images/antitrustorder/en/3720181652328966.pdf>; *Samir Agrawal v. Competition Comm'n of India*, Competition Appeal (AT) No. 11 of 2019, Nat'l Co. Law App. Trib., Order (29 May 2020), https://images.assettype.com/barandbench/2020-06/54c266ed-44b6-4aca-8206-304ee83ba08d/Samir_Agrawal_vs_CCI_Ola_uber.pdf; *All India Online Vendors Ass'n v. Flipkart India Pvt. Ltd.*, Case No. 20 of 2018, Competition Comm'n of India, Order (6 November 2018), <https://www.cci.gov.in/images/antitrustorder/en/2020181652328846.pdf>; *Flipkart Internet Pvt. Ltd. v. Competition Comm'n of India*, Competition Appeal (AT) No. 16 of 2019, Nat'l Co. Law App. Trib., Order (4 March 2020), <https://nclat.nic.in/sites/default/files/migration/upload/11494396055e60c6bc5dccc4.pdf>. For further details and case codes, see Annexure I.

The study adopts a small-N, high-resolution design aimed at diagnosing patterns and gaps in relevant domain expertise, rather than making statistical generalisations. However, with this corpus, despite the reasoning rich orders, we cannot claim statistical representation, or a causal generalisation beyond the cases studied. Although it covers all NCLAT orders on competition appeals relating to digital platforms, it does not constitute an exhaustive account of all competition appeals or all CCI-NCLAT interactions.

2.3 Biaxial Mapping Framework

If, as the Supreme Court’s cross-sector jurisprudence suggests, an appellate tribunal must neither abdicate review nor transform itself into a substitute regulator, the relevant question is not simply whether the NCLAT agrees or disagrees with the CCI. Rather, the key question is whether its mode of reasoning reflects disciplined error-correction or institutional substitution. The methodology adopted in this study is designed precisely to interrogate that distinction.

This study employs a biaxial mapping technique that positions adjudicated issues along two independent dimensions: legal-doctrinal (LD) and economic-analytic (EA) reasoning. This enables a structured diagnosis of differences in domain expertise between regulatory and appellate institutions. The choice of these two axes is grounded in the institutional division of labour articulated in electricity, securities and competition jurisprudence.

The economic-analytic axis captures the degree to which an adjudicatory body engages with the economic architecture of the case, including market shares, counterfactuals, causal mechanisms, modelling logic, and evidentiary evaluation. In the Supreme Court’s framework, such predictive and technical assessments fall within the core domain of specialised regulators. An appellate body is expected to intervene when such reasoning is perverse, unsupported by evidence, internally inconsistent, or legally misdirected—not merely because an alternative economic view is possible.¹⁷ Measuring economic-analytic engagement, therefore, allows assessment of whether the NCLAT is correcting evidentiary infirmities or effectively re-performing the regulator’s economic function.

¹⁷ *Competition Commission Of India vs Steel Authority Of India* (2010), <https://www.cci.gov.in/images/legalframeworkjudgement/en/1-cci-v-sail-21652182677.pdf>

The legal-doctrinal axis, by contrast, captures doctrinal framing, normative structuring, proportionality review, and legality-based reasoning. These dimensions are more closely associated with appellate oversight in a layered regulatory state. The Supreme Court's repeated insistence that appellate forums police legality, rationality and procedural integrity without supplanting technical discretion finds operational expression in these parameters.

By keeping the two axes orthogonal rather than oppositional, the methodology mirrors the constitutive equilibrium discussed earlier under institutional design choices. The NCLAT is neither required to be economically mute nor doctrinally dominant; rather, it is expected to calibrate its intervention according to the nature of error. The biaxial mapping framework thus translates an institutional theory of appellate restraint into measurable reasoning dimensions. The empirical question that follows is whether the NCLAT's reasoning patterns align with this model or drift toward substitution or attenuation, with implications for digital market regulation.

Dimensions constituting the EA and LD reasoning scores were developed by way of inductive coding. Each issue is scored independently on two non-normalised axes, each ranging from 0 to 10:

(a) Economic-Analytic (EA) Reasoning Score (X-axis)

Measures the extent to which reasoning relies on:

- numerical data,
- economic metrics (market shares, HHI, margins, elasticity),
- modelling logic,
- counterfactual or threshold-based assessment,
- engagement with or deference to the DG's quantitative analysis.

A higher score indicates deeper and more explicit economic engagement.

(b) Legal-Doctrinal (LD) Reasoning Score (Y-axis)

Measures the extent to which reasoning relies on:

- normative principles (fairness, choice, coercion),
- doctrinal interpretation,
- structural or institutional logic,
- proportionality or rights-based reasoning,
- narrative or conceptual justification.

A higher score indicates deeper doctrinal engagement.

The two scores are independent. An issue may score high on both axes, low on both, or display an epistemic asymmetry.¹⁸

2.4 Coding Schema

For each issue:

- Relevant paragraphs are identified.
- Reasoning content is evaluated against a predefined rubric.
- Two independent scores are computed by adding the scores under all the constituent dimensions

Both CCI and NCLAT reasoning are coded:

- CCI and NCLAT receive separate scores for the same issue.
- This enables direct institutional comparison.

2.5 Evaluation Rubric

An issue can be:

- low legal-doctrinal and low economic-analytic (thin reasoning)
- high legal-doctrinal and high economic-analytic (deep hybrid reasoning)

¹⁸ D Mantzari, *Courts, Regulators, and the Scrutiny of Economic Evidence* (2022).

- high legal-doctrinal, low economic-analytic
- low legal-doctrinal, high economic-analytic

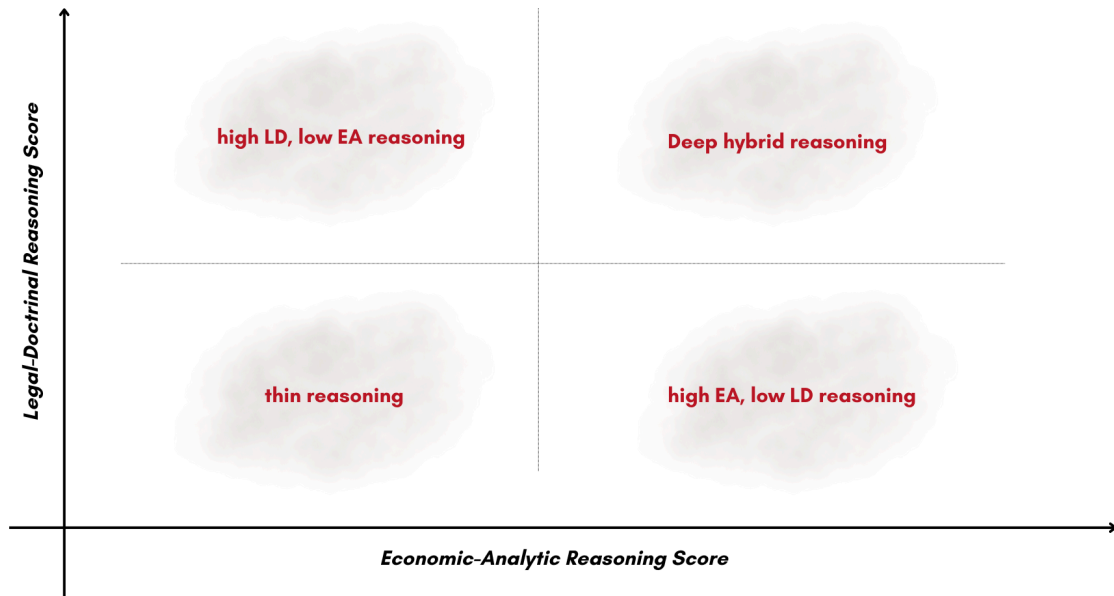


Figure 1: Quadrant signatures of the biaxial map

Economic-Analytic Reasoning Score

Dimension	Lens	Score = 0	Score = 1	Score = 2
1. Engagement with Economic Evidence	Does the NCLAT engage with the economic evidence underlying the CCI's finding (typically derived from DG analysis)?	No engagement with evidence; economic evidence is ignored, bypassed, or treated irrelevant	Evidence is acknowledged or summarised but not substantively evaluated	Evidence is substantively assessed, questioned, or weighed (including assumptions or limits)

2. Use of Economic Concepts	Are economic concepts used in an operational, analytical manner?	No economic concepts used	Economic concepts mentioned as labels (e.g. “data advantage”, “network effects”) without analysis	Economic concepts are analysed causally or structurally (e.g. how data advantage leads to foreclosure)
3. Treatment of Effects and Counterfactuals	Does the NCLAT reason about competitive effects or plausible counterfactuals?	Effects are assumed, denied, or dismissed categorically	Effects are asserted but not traced through mechanisms	Effects are reasoned through mechanisms, scenarios, or counterfactuals
4. Remedy Justification Logic <i>(apply only where remedies are discussed)</i>	Is the remedy evaluated using economic necessity or proportionality reasoning?	Remedy accepted or rejected abstract or purely legal grounds	Partial reasoning (e.g., duration or scope mentioned without justification)	Remedy evaluated using necessity, proportionality, or effects-based reasoning
5. Epistemic Deference to CCI/DG	How does the NCLAT treat the CCI’s and DG’s economic expertise?	Substitutes its own reasoning without engaging with expert analysis	Acknowledges expertise formally but limits or sidelines it	Defers on economic assessment while policing legality or procedure

Economic-Analytic Reasoning Score (EA) = Sum of relevant dimension scores

Legal-Doctrinal Reasoning Score

Dimension	Lens	Score = 0	Score = 1	Score = 2
1. Normative Framing and Value Reasoning	Does the NCLAT frame the issue using normative values such as fairness, autonomy, consent, dignity, or rights?	No normative values invoked; reasoning is technical or procedural only	Normative terms mentioned but not used to justify the conclusion	Normative values explicitly structure the reasoning and justify the outcome
2. Rights-Based or Individual-Centric Framing	Does the NCLAT treat the issue primarily through individual rights, consent, or waiver rather than systemic market effects?	No reliance on individual rights or consent frameworks	Individual rights or consent mentioned but secondary	Individual autonomy, consent, or waiver is central to resolving the issue
3. Doctrinal Formalism	Does the NCLAT rely on legal rules, categories, or precedents without engaging underlying economic mechanisms?	Minimal reliance on formal doctrine	Doctrine cited as supportive but not dispositive	Rule-based or categorical legal reasoning is decisive
4. Categorical or Binary Reasoning	Does the NCLAT resolve the issue using binary logic	No categorical shortcuts; reasoning	Some binary reasoning appears but is	Categorical logic substitutes for deeper analysis

	(e.g., consent exists → harm removed)?	remains nuanced	not determinative	
5. Formal Proportionality or Legality Review	Does the NCLAT assess remedies or findings primarily through legality, jurisdiction, or formal proportionality rather than effects?	Remedies assessed through contextual or mixed reasoning	Legal thresholds discussed but not decisive	Outcome turns on legality, competence, or formal proportionality alone

2.6 Capturing Data

Case metadata layer

Column Name	Description
case_name	WhatsApp Privacy / GPBS / Meru, etc.
institution	CCI or NCLAT
order_date	Date of the order

Issue data layer

Column Name	Description
issue_id	Unique identifier
issue_description	Neutral description of the issue

cci_paragraphs	Paragraph(s) where the CCI framed this issue
nclat_paragraphs	Paragraph(s) where the NCLAT addresses it

Economic-Analytic Reasoning Score layer

Column Name	Score (0-2)	Description
ea_evidence_engagement	0-2	Engagement with economic evidence / DG analysis
ea_economic_concepts	0-2	Operational use of economic concepts
ea_effects_counterfactuals	0-2	Reasoning about effects and counterfactuals
ea_remedy_logic	0-2	Remedy necessity/proportionality (NA if not applicable)
ea_epistemic_deference	0-2	Deference to economic expertise

Derived Column
ea_total = sum of applicable ea columns

Legal-Doctrinal Reasoning Score layer

Column Name	Score (0–2)	Description
ld_normative_principles	0–2	Reliance on fairness, rights, autonomy
ld_doctrinal_formalism	0–2	Rule-based or categorical legal reasoning
ld_rights_framing	0–2	Individual consent, choice, waiver framing
ld_categorical_reasoning	0–2	Binary logic (rule formalism)
ld_proportionality_formal	0–2	Legal proportionality without economic analysis

Derived column
ld_total = sum of ld columns

2.7 Methodological Limitations

Potentials of the method adopted:

- Identify patterns of deference, substitution, or dilution of economic reasoning.
- Reveal systematic legal-doctrinal/economic-analytic imbalances.
- Diagnose institutional tendencies in appellate review.

Limitations of the method adopted:

- Cannot claim statistical generalisability.

- Cannot establish causal relationships.
- Cannot evaluate the substantive correctness of outcomes.

Chapter 3: Findings

3.1 Overview of Dataset and Analytical Frame

The empirical analysis is based on 35 adjudicated issues across seven digital competition cases, each coded separately for the CCI and the NCLAT. This yields 70 institution-issue observations. Of the 35 issue pairs, 31 have complete scoring data for both institutions. Four issues (1C, 1F, 1K, and 4B) were scored at only one institutional level, as they were substantively addressed by the NCLAT but not independently reasoned through in the corresponding CCI order, or vice versa.

The objective of the analysis is not to assess the substantive correctness of outcomes. It is to identify structured patterns in reasoning across institutions. Three questions guide the analysis:

1. Does appellate review by the NCLAT systematically reduce economic-analytic reasoning intensity relative to the regulatory stage?
2. Does legal-doctrinal reasoning intensify at appeal, and if so, which of its constituent dimensions drive the shift?
3. Do these patterns align with a model of structured appellate scrutiny as laid down by the Supreme Court of India, or do they suggest substitutionary re-adjudication or insufficient engagement with the economic architecture of the CCI's findings?

3.2 Aggregate Pattern: Economic-Analytic Compression and Doctrinal Redistribution

The first-order empirical pattern is unambiguous on the economic-analytic axis and more textured on the legal-doctrinal axis. CCI's mean economic-analytic (EA) score across all 35 issues is 4.66 (median 5.0), while the NCLAT's mean EA score is 2.51 (median 2.0). In paired comparisons, the NCLAT scores lower than the CCI on the EA axis in 25 of 35 issue pairs, scores the same in five, and scores higher in only five. The average paired reduction is 2.14 points on a 10-point scale. This pattern of economic-analytic compression is consistent across cases, although its magnitude varies by case and issue type (discussed below in sections 3.4 and 3.5).

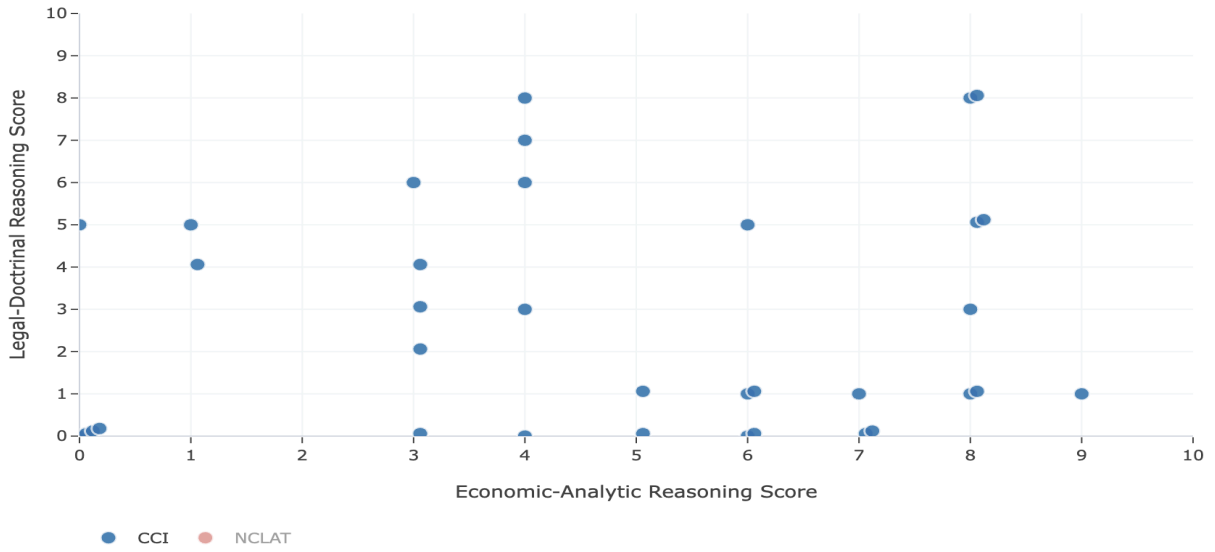


Figure 2: Scatter plot of CCI issue-level scores¹⁹

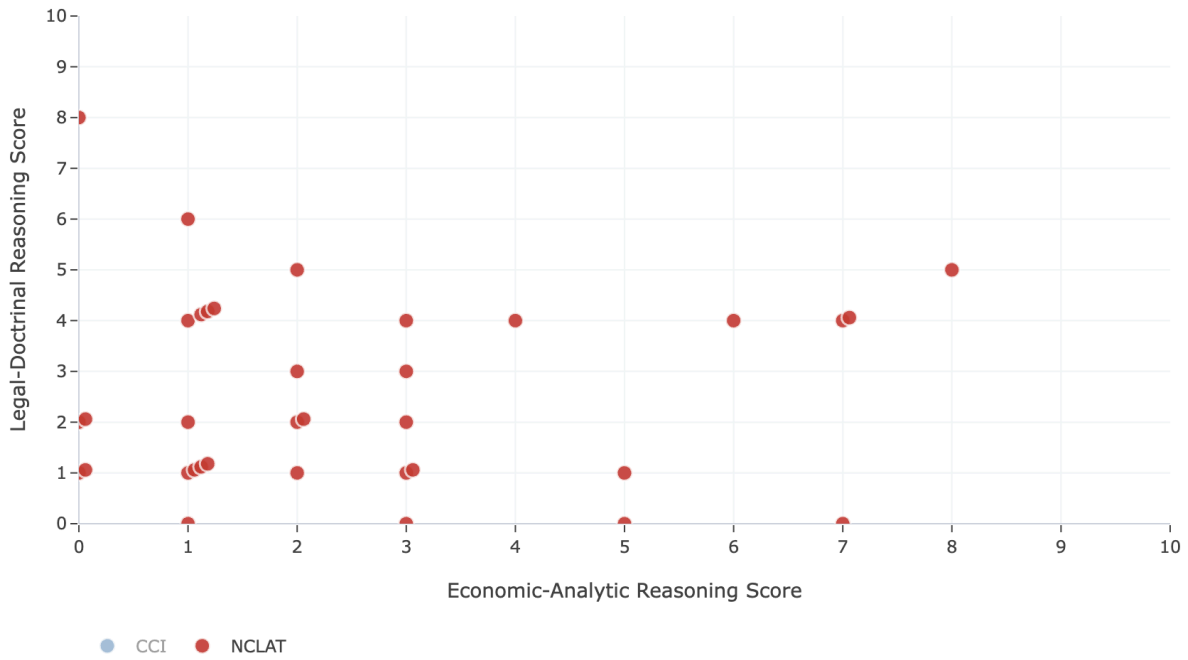


Figure 3: Scatter plot of NCLAT issue-level scores

¹⁹ The comprehensive interactive plot for all the scatter-plots in this research study is available at <http://nist.anshumansahoo.com/>.

The legal-doctrinal (LD) axis presents a more nuanced picture. The CCI’s mean LD score is 2.69, while the NCLAT’s is 2.51. On aggregate, these figures appear almost equivalent. However, the paired distribution reveals a different structure. In 14 of 35 pairs, the NCLAT’s LD score exceeds the CCI’s; in 12 pairs, it is lower; and in 9 pairs, the scores are equal. The mean paired delta is only -0.17. The near-parity in totals, however, masks a significant internal redistribution within the LD axis, which becomes visible only when the sub-dimensions are disaggregated (section 3.3.2 below).

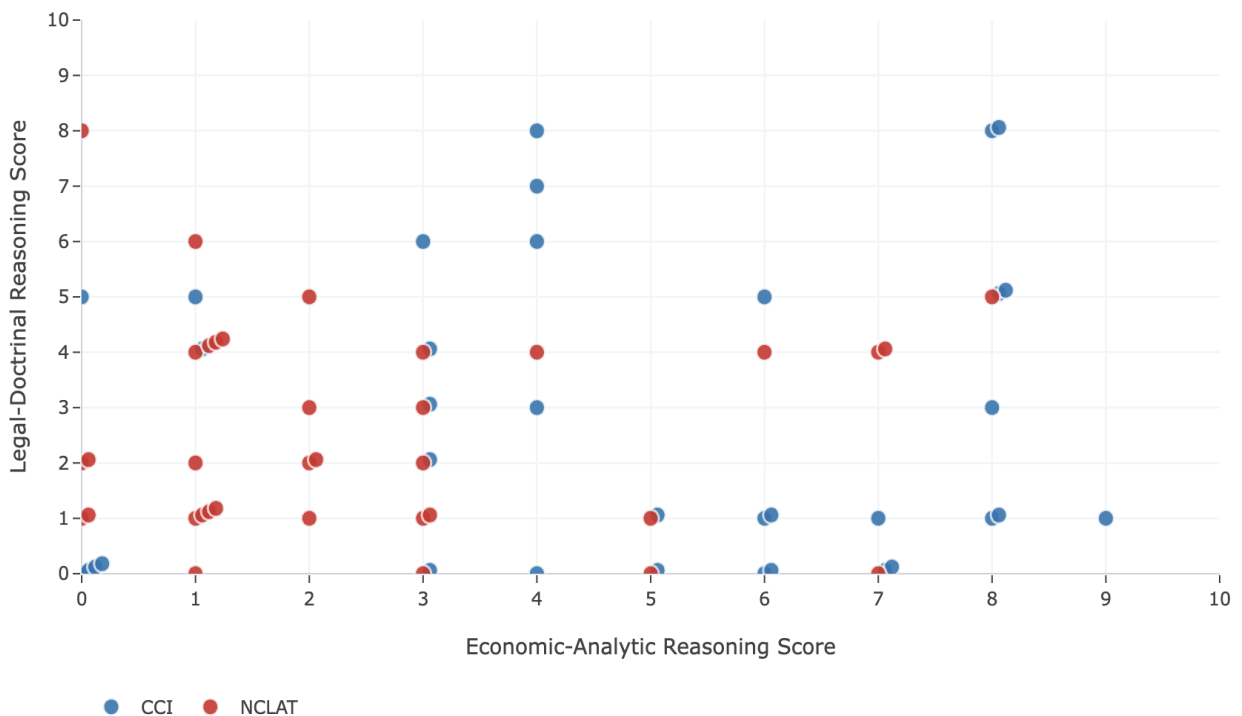


Figure 4: Overlay scatter of CCI and NCLAT

The aggregate pattern can therefore be characterised as a systematic compression of economic-analytic reasoning at the appellate level, alongside an internal recomposition of legal-doctrinal reasoning rather than uniform intensification or decline.

3.3 Sub-Dimension Shifts

Aggregate score differentials establish the direction and magnitude of change across the two axes but obscure the internal architecture of that change. A decline in EA totals may result from

reduced engagement with economic evidence, diminished operational use of economic concepts, attenuation of counterfactual reasoning, changes in remedy justification, or shifts in epistemic deference. Similarly, changes in LD totals may reflect normative intensification, doctrinal formalism, categorical reasoning, or legality-based proportionality review. To identify both whether reasoning changes and how it changes, the analysis disaggregates each axis into its constitutive sub-dimensions.

3.3.1 Economic-Analytic Sub-Dimensions

The economic-analytic axis comprises five dimensions. Paired analysis shows that the aggregate compression is driven primarily by three dimensions, while a fourth moves in the opposite direction.

The most substantial reductions occur in two closely related dimensions: the operational use of economic concepts (mean paired delta: -1.10; the NCLAT scores lower in 22 of 31 valid pairs, higher in none) and treatment of effects and counterfactuals (mean paired delta: -1.06; the NCLAT scores lower in 23 of 31 pairs and higher in only one). At the CCI level, economic concepts such as network effects, leveraging, foreclosure, data advantage, and multi-sided market dynamics are frequently deployed in a causally structured manner. The Commission traces how dominance in one market translates into exclusionary effects in another, or how tying arrangements distort entry incentives. At the appellate level, references to such concepts persist, but their analytical function attenuates. Concepts appear as descriptive labels rather than as instruments for tracing causal mechanisms. Similarly, while the CCI frequently constructs harm narratives through scenario-building and counterfactual assessment—particularly in digital platform cases—the NCLAT’s reasoning tends to abbreviate this mechanism-based analysis. Effects may sometimes be acknowledged but are not reconstructed through structured modelling logic.

Engagement with economic evidence shows a moderate reduction (mean paired delta: -0.58; lower in 13 pairs, higher in only one). The CCI’s reasoning regularly engages with DG findings, data tables, and quantitative submissions. The NCLAT may summarise or acknowledge this material, but substantive evaluation or stress-testing of evidentiary foundations is less frequent.

Remedy justification logic also declines, although this dimension only applies to a subset of issues (mean paired delta: -0.52; lower in nine pairs, higher in two). Where the CCI grounds penalty and remedy reasoning in proportionality linked to market effects, appellate evaluation tends to shift toward legality, jurisdictional propriety, or statutory interpretation.

One economic-analytic sub-dimension moves in the opposite direction. Epistemic deference to the CCI/DG increases at the appellate level (mean paired delta: +0.55; higher in 14 pairs, lower in only three). The NCLAT more frequently acknowledges the Commission's technical expertise or recognises the DG's analytical role. However, this deference operates at the level of institutional posture rather than replicated economic engagement. Economics is retained as a legitimating background, but not consistently as an actively reconstructed analytical core.

The internal structure of the EA compression can therefore be summarised as follows: the appellate forum reduces analytic depth in mechanism tracing, counterfactual construction, and evidentiary engagement, while simultaneously increasing formal recognition of regulatory expertise. Economic reasoning is not erased but repositioned—from active analytical function to acknowledged institutional authority.

3.3.2 Legal-Doctrinal Sub-Dimensions

The legal-doctrinal axis similarly comprises five dimensions. Disaggregation reveals that the near-parity in aggregate LD scores conceals opposing movements within the axis.

The most consistently amplified dimension is doctrinal formalism (mean paired delta: +0.55; higher in 14 pairs, lower in only three). Statutory interpretation, definitional boundaries, and reliance on precedent become more prominent at the appellate level. Legal categories structure reasoning in ways that often supersede detailed economic tracing.

Categorical or binary reasoning also increases modestly (mean paired delta: +0.19; higher in nine pairs, lower in five). In certain issues, particularly those involving standards of proof or consent-related framing, appellate reasoning shows greater reliance on threshold logic. The presence or absence of a statutory element may become determinative without extended economic balancing.

By contrast, three LD sub-dimensions decline at the appellate level. Normative framing (mean paired delta: -0.52; lower in 11 pairs, higher in three) does not intensify at appeal. References to fairness, autonomy, or broader competition policy objectives do not significantly expand in the NCLAT's reasoning. Rights-based or individual-centric framing (mean paired delta: -0.35; lower in 10 pairs, higher in three) similarly does not displace market-structure analysis uniformly, though it appears selectively in certain contexts. Formal proportionality or legality review (mean paired delta: -0.42; lower in 10 pairs, higher in two) also does not exhibit the systematic increase expected of an appellate body focused on legality scrutiny.

The overall legal-doctrinal shift is therefore best characterised as doctrinal consolidation rather than normative elaboration. The appellate forum intensifies legal structuring and categorical reasoning, while normative, rights-based, and proportionality-oriented reasoning are either stable or decline. The near-parity in aggregate LD totals is thus an artefact of these offsetting internal movements.

3.3.3 Structural Interpretation of Sub-Dimension Patterns

The disaggregated analysis reveals that the observed patterns do not represent a simple substitution of law for economics. Rather, they reflect a patterned redistribution with a distinct internal logic: economic mechanism and causality tracing declines substantially; doctrinal structuring and categorical reasoning intensify; normative value reasoning remains stable or declines; and epistemic deference increases.

This pattern aligns, in part, with the Supreme Court's model of structured appellate scrutiny. The appellate forum appears more comfortable policing legality, statutory interpretation, and categorical thresholds than reconstructing predictive economic models. Where it engages with economics, it does so selectively and through a posture of deference, rather than through independent analytical reconstruction.

However, the pattern also reveals a potential tension. In complex digital platform cases where effects-based reasoning constitutes the core of the regulatory finding, reduced engagement with counterfactuals may limit the depth of appellate scrutiny even where the appellate body formally defers to regulatory expertise. Deference without engagement is structurally distinct from deference with verification.

3.4 Quadrant Signature

The biaxial framework allows each issue to be located on a plane defined by economic-analytic intensity (X-axis) and legal-doctrinal intensity (Y-axis) (see *Figure 1*), and the distribution of issues across quadrants reveals distinct institutional profiles.

The CCI's issues are distributed as follows: eight issues in the high-EA/high-LD quadrant (deep hybrid reasoning), 15 in the high-EA/low-LD quadrant (economics-dominant reasoning), five in the low-EA/high-LD quadrant (doctrine-dominant reasoning), and seven in the low-EA/low-LD quadrant (thin reasoning). The modal CCI quadrant is high-EA/low-LD, reflecting the Commission's orientation as an economics-forward regulatory body. However, the substantial presence in the high-high quadrant (eight issues) indicates that the CCI's reasoning is not exclusively economic; it frequently integrates doctrinal structuring with economic analysis, particularly in abuse of dominance and leveraging determinations.

The NCLAT's distribution is markedly different: five issues in the high-EA/high-LD quadrant, three in the high-EA/low-LD quadrant, eight in the low-EA/high-LD quadrant, and 19 in the low-EA/low-LD quadrant. The modal NCLAT quadrant is low-EA/low-LD, which represents thin reasoning on both dimensions. The shift from CCI's modal position (high-EA/low-LD) to the NCLAT's modal position (low-EA/low-LD) captures the core empirical finding: appellate reasoning compresses economic-analytic engagement without commensurately expanding legal-doctrinal engagement.

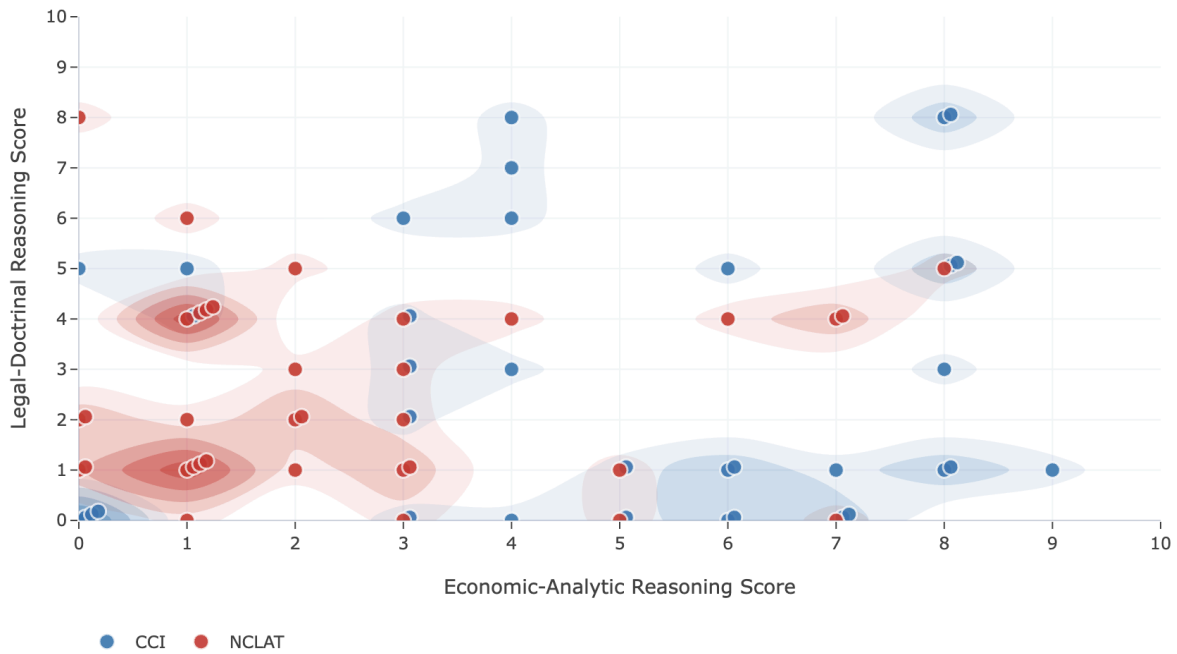


Figure 5: Density cloud overlays.

The density cloud visualisation reinforces this finding. The CCI’s reasoning density stretches horizontally toward higher EA scores with moderate LD elevation, indicating institutional consistency in economics-forward reasoning across digital platform cases. The NCLAT’s density distribution is compressed toward the lower-left region, clustering around low EA scores with low-to-moderate LD engagement. The contrast between the two clouds reveals an institutional reasoning gradient. Economic density is concentrated at the regulatory level, while appellate reasoning gravitates toward consolidation through legal framing, although it does not consistently reach high doctrinal intensity.

3.5 Case-Level Variation

The aggregate pattern of EA compression is not evenly distributed across cases. Case-level analysis reveals meaningful variation that is structurally informative.

The most pronounced EA compression occurs in the Google Android case (*In re Google v. Umar Javed*), where the CCI’s mean EA score is 6.9, and the NCLAT’s is 1.6, reflecting a mean case-level reduction of 5.3 points. This case involved complex leveraging and tying theories across interconnected platform markets (the Play Store, Android OS, Google Search, Chrome,

and YouTube), and the CCI's orders engaged extensively with mechanism tracing, effects analysis, and counterfactual reasoning across multiple abuse findings. At the appellate level, the NCLAT addressed the same issues primarily through epistemic deference and doctrinal categorisation, with economic concepts and effects reasoning scoring zero on most sub-dimensions in issues 2B through 2G.

The Google Play Billing case (*Alphabet Inc. and Ors. v. CCI*) shows a similarly large compression (CCI mean EA: 5.0; NCLAT mean EA: 1.1), with appellate reasoning on abuse and leveraging issues compressed to minimal economic engagement.

By contrast, three cases exhibit relative equilibrium between CCI and NCLAT EA scores. The WhatsApp privacy case (*In Re WhatsApp LLC*) shows near-parity in case-level EA means (CCI: 3.6; NCLAT: 3.7), although this aggregate masks significant issue-level variation. The Meru/Ola case shows identical means (CCI: 4.0; NCLAT: 4.0), and the Flipkart case similarly shows equivalence (CCI: 4.0; NCLAT: 4.0).

Taken together, these patterns suggest that EA compression is most severe in cases involving complex, multi-layered economic theories of harm (leveraging, tying, ecosystem foreclosure) and least pronounced in cases where the economic analysis is less technically demanding or where the appellate inquiry raised distinct issues not fully addressed at the regulatory stage.

3.6 Issue-Type Clustering

The reasoning gradient identified above is not evenly distributed across all doctrinal questions. Shifts between CCI and NCLAT reasoning cluster systematically around particular categories of issues.

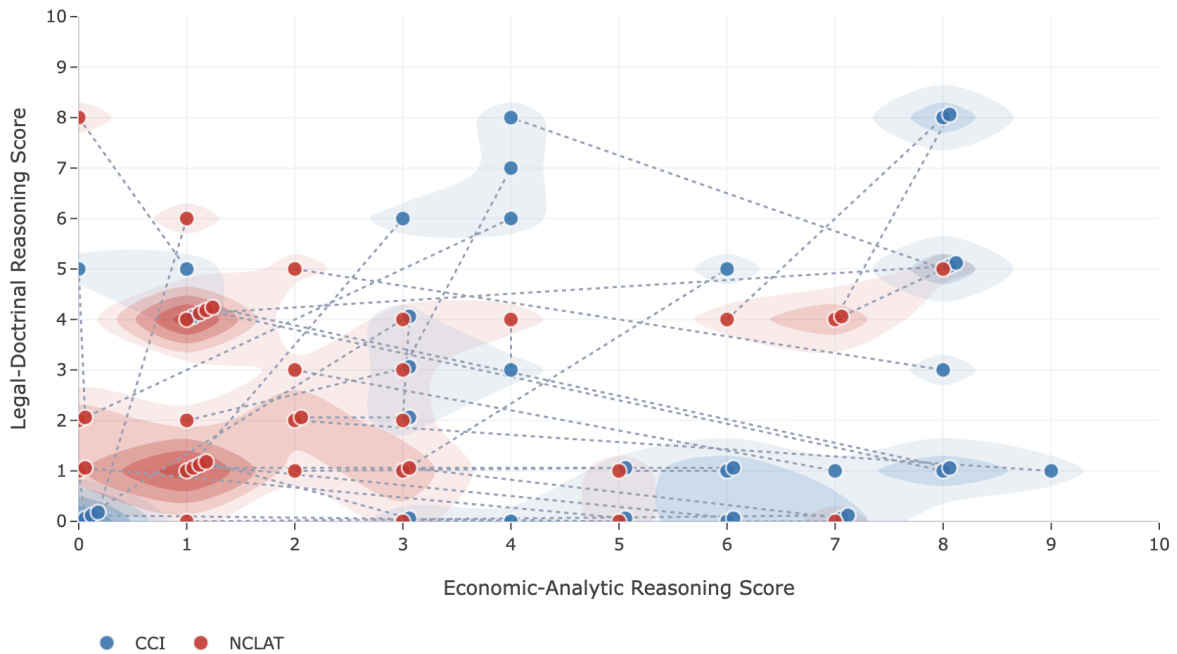


Figure 6: Paired issue-level reasoning shifts

Market definition and dominance assessment display moderate and consistent EA compression. At the regulatory stage, these questions involve structured economic analysis grounded in substitutability assessment, competitive constraints, and market-share interpretation. At appeal, the NCLAT typically evaluates whether the Commission’s conclusions are evidentially sustainable rather than independently re-performing the economic inquiry. The reasoning thus shifts from economic construction to legal validation, aligning with the expectation that appellate review polices error rather than reproduces expert analysis.

Effects analysis and leveraging theories exhibit the most pronounced EA divergence. These questions require forward-looking economic reasoning, counterfactual modelling, and causal mechanism tracing across interconnected markets. The CCI’s decisions frequently articulate detailed narratives of foreclosure, ecosystem lock-in, or incentive distortion. At appeal, however, engagement with these economic mechanisms contracts sharply. The NCLAT’s analysis tends to reframe the inquiry around standards of proof, evidentiary sufficiency, or legal thresholds governing abuse. Economics is repositioned as background justification, with its adequacy assessed through legal criteria. This explains why the largest EA deltas in the dataset (ranging

from -5 to -7) cluster in the leveraging, tying, and abuse findings of the Google Android and GPBS cases.

Jurisdictional questions and legal standards exhibit the inverse pattern: LD intensification without EA compression. Issues concerning statutory competence, applicable legal tests, or evidentiary thresholds attract dense doctrinal engagement at appeal. The most striking example is issue 3B (legal standards for effects-based analysis in the GPBS case), where the NCLAT's LD score (8) substantially exceeds the CCI's (5), while its EA score (0) falls below the CCI's (1). Here, the appellate forum expands legal structuring rather than economic reconstruction.

Issues originating at only one institutional level constitute a distinct category. Four issues (1C, 1F, 1K, 4B) were substantively addressed by the NCLAT but not independently reasoned in the CCI order. These represent instances where the appellate tribunal introduced reasoning on questions that the regulator did not separately address, such as the validity of consent under competitive coercion (1C) or international jurisprudence on data privacy as a competition concern (1F). These asymmetric issues are analytically significant because they demonstrate that the appellate process is not purely subtractive. The NCLAT can generate reasoning on questions not foregrounded at the regulatory stage, even as it compresses reasoning on questions that the CCI addressed in depth.

3.7 Summary of Findings

The analysis reveals two structured findings. First, appellate reasoning demonstrates a persistent reduction in economic-analytic engagement relative to regulatory reasoning. Across market definition, dominance assessment, effects analysis, and leveraging theories, NCLAT orders exhibit lower engagement with economic evidence, modelling logic, and counterfactual reasoning than corresponding CCI determinations. This compression is driven primarily by reduced operational use of economic concepts and attenuated effects and counterfactual reasoning, while epistemic deference to CCI/DG simultaneously increases. The resulting profile is one in which economics is acknowledged as the regulator's domain but is not independently reconstructed or stress-tested at the appellate stage.

Second, legal-doctrinal reasoning does not uniformly expand to fill the space vacated by economic-analytic compression. Instead, it undergoes internal recomposition. Doctrinal

formalism and categorical reasoning intensify, while normative framing, rights-based reasoning, and formal proportionality review remain stable or decline. The appellate forum's reasoning profile is characterised by doctrinal consolidation rather than normative elaboration. Legal categories and statutory interpretation structure the analysis, but broader values of fairness, autonomy, and competition policy do not correspondingly expand.

The CCI emerges from the data as an economics-forward hybrid regulator. Its modal reasoning profile occupies the high-EA/low-LD quadrant, with a significant presence in the high-EA/high-LD space in complex abuse determinations. The NCLAT's modal profile, by contrast, occupies the low-EA/low-LD quadrant, with selective doctrinal intensification on jurisdictional and legal-standards questions.

These patterns lend themselves to two competing interpretations. On one reading, economic-analytic compression reflects institutional discipline consistent with the Supreme Court's model of calibrated appellate review. By refraining from reconstructing economic analysis de novo, the appellate tribunal preserves regulatory primacy and prevents duplicating expert decision-making. Increased epistemic deference and doctrinal structuring thus operate as mechanisms through which legality is enforced while specialised expertise remains anchored at the regulatory level.

An alternative reading complicates this conclusion. Digital markets are characterised by network effects, multi-sided dynamics, and high predictive uncertainty. Effective appellate oversight in such environments may require rigorous stress-testing of economic reasoning rather than its compression. If appellate review systematically reduces engagement with counterfactual analysis and effects reasoning, doctrinal consolidation may occur without adequate technical verification. The risk is not one of straightforward substitution of the regulator's role, but of a subtler failure involving threshold formalism, where legality is assessed independently of underlying economic robustness.

The findings must be interpreted in light of the study's methodological constraints. The analysis is descriptive rather than causal, and the coding captures reasoning as expressed in orders rather than deliberative processes internal to institutions. The corpus is limited to digital platform cases and does not claim statistical generalisability across all competition appeals. Nonetheless, the

consistency of economic-analytic compression across cases, issue clusters, and reasoning dimensions strengthens the inference that the observed pattern is institutional rather than incidental.

Chapter 4: Discussion and Policy Recommendations

4.1 Deference Without Verification

The central interpretive challenge posed by the findings is not that the NCLAT reasons differently from the CCI. Institutional role differentiation would predict as much, and the Supreme Court’s cross-sector jurisprudence actively requires it. The challenge is the specific form that this differentiation takes.

The sub-dimension analysis reveals a pattern that cannot be fully explained by appellate restraint alone. On the economic-analytic axis, epistemic deference to the CCI and the DG is the only sub-dimension that increases at the appellate level. At the same time, the three sub-dimensions that constitute the substantive content of economic reasoning—operational use of economic concepts, effects and counterfactual analysis, and engagement with economic evidence—decline substantially and consistently. This combination creates a structural condition that may be described as deference without verification, where the appellate forum formally recognises the regulator’s economic expertise while reducing its own capacity to assess whether that expertise has been exercised adequately in a given case.

This distinction matters because deference, in the Supreme Court’s framework, is not unconditional. In *WBERC*,²⁰ the Court held that appellate interference is warranted where findings are perverse, unsupported by evidence, or based on legal error. In *Excel Crop Care*,²¹ it permitted merits intervention when tethered to identifiable legal standards. These formulations presuppose that the appellate body engages sufficiently with the economic reasoning to identify perversity, evidentiary gaps, or misdirection. Formal acknowledgement of regulatory expertise, without substantive engagement with how that expertise was deployed, risks converting structured deference into institutional acquiescence.²² Where the theory of harm depends on probabilistic reasoning, counterfactual construction, and causal mechanism tracing—as is typically the case in digital platform cases—the appellate tribunal’s capacity to detect error

²⁰ *WBERC v CESC Ltd* (2002) AIR SC 3588.

²¹ *Excel Crop Care v CCI* (2017) 8 SCC 47.

²² D. Mantzari, *Courts, Regulators, and the Scrutiny of Economic Evidence: Comparative Perspectives* (2022).

depends on the depth of its engagement with these analytical structures, rather than on its willingness to defer to the institution that produced them.²³

The finding that this pattern is most pronounced in the *Google Android*²⁴ and *GPBS*²⁵ cases, where the economic theories of harm were most complex and multi-layered, reinforces the concern. Economic-analytic compression is not random; it correlates with the analytical demands of the case. This suggests that the verification gap widens precisely where the stakes of appellate oversight are highest, particularly in cases involving ecosystem leveraging, multi-market tying, and predictive effects analysis that characterise contemporary digital competition disputes.

4.2 The Thin Reasoning Problem

The quadrant analysis introduces a finding that complicates any purely role-based explanation. If NCLAT were functioning as a legality-oriented appellate reviewer, one would expect its modal reasoning position to be low-EA/high-LD (reduced economic reconstruction accompanied by intensified doctrinal scrutiny). The data do not support this expectation. The NCLAT's modal quadrant is low-EA/low-LD, with 19 of 35 issues falling in this region. Only eight issues occupy the low-EA/high-LD space that structured appellate scrutiny would predict.

This pattern suggests that, in a significant proportion of issues, appellate reasoning is attenuated on both dimensions rather than reoriented from one dimension to another. The sub-dimension decomposition clarifies the basis for this result. Within the LD axis, doctrinal formalism increases, but normative framing, rights-based reasoning, and formal proportionality review decline. The aggregate LD total remains nearly unchanged because these opposing movements cancel each other out. However, from the standpoint of appellate function, these are not equivalent substitutions. Doctrinal formalism, understood as reliance on statutory categories, definitional thresholds, and precedent, provides legal structure but does not, by itself, generate

²³ S Breyer, "Economic Reasoning and Judicial Review," *The Economic Journal* 119 (2009): F123. <https://doi.org/10.1111/j.1468-0297.2008.02233.x>

²⁴ *Google LLC v. Competition Comm'n of India*, Competition Appeal (AT) No. 01 of 2023, Nat'l Co. Law App. Trib., Order (29 March 2023).

²⁵ *Google LLC v. Competition Comm'n of India*, Competition Appeal (AT) No. 04 of 2023, Nat'l Co. Law App. Trib., Order (28 March 2025), https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjUtMDMtMjgvdjY291cnRzLzEvZGFpbHkvMTc0NDgwNzE1OTk1Mzk0MjI1NzY3ZmZhNGY3MmQ1YzEucGRm.

the evaluative depth required for appellate review of complex economic regulation. The decline in formal proportionality review is particularly significant, since proportionality analysis is one of the primary doctrinal instruments through which appellate bodies assess whether regulatory interventions are appropriately calibrated to the harms they address.

The practical implication is that economic-analytic compression is not offset by a corresponding deepening of legal-doctrinal scrutiny. In too many issues, the appellate order neither reconstructs the economic analysis nor subjects it to rigorous doctrinal evaluation. The result is thin review: a mode of adjudication that may produce defensible outcomes in individual cases but does not generate the kind of reasoned elaboration necessary to strengthen the doctrinal foundations of competition law over time.

4.3 Connecting Reasoning Patterns to Institutional Design

The institutional design contrasts outlined in section 1.2 offer a plausible explanatory framework for the reasoning patterns observed. CCI members are drawn from a qualification pool that explicitly includes economics, competition matters, and market analysis, and the Commission is supported by the DG's investigative and economic research capacity. By contrast, the NCLAT's technical members are qualified in industrial finance, corporate restructuring, insolvency, and related disciplines. Economics, competition law, and market analysis are not among the specified areas of expertise under Section 411 of the Companies Act, 2013.

The finding that economic concepts are used as descriptive labels rather than as instruments of causal mechanism tracing at the appellate level is consistent with what one would expect from an adjudicatory body whose members possess deep familiarity with corporate and financial administration, but limited institutional exposure to competition economics as a working analytical discipline. This is not an indictment of individual competence. Rather, it reflects the aggregate effect of statutory design choices on institutional reasoning output. When the qualification criteria do not include competition economics, and when competition appeals constitute a small fraction of the tribunal's docket, reasoning will predictably²⁶ reflect the expertise the tribunal was designed to deploy, rather than the expertise the subject matter demands.

²⁶ See generally, A Vermeule, *Judging under Uncertainty: An Institutional Theory of Legal Interpretation* (2006).

This institutional explanation also accounts for the case-level variation. In the WhatsApp, Meru, and Flipkart cases, where the economic analysis was less technically demanding or where NCLAT engagement was shaped by distinct procedural or jurisdictional questions, economic-analytic compression is minimal. By contrast, in the Google Android and GPBS cases, where the Commission’s findings depend on complex multi-market leveraging theories, ecosystem dynamics, and effects modelling, the gap between regulatory reasoning and appellate engagement is at its widest. The verification gap is not uniform but rather a function of the match, or misalignment, between the analytical demands of the case and the institutional resources of the reviewing body.²⁷

4.4 Policy Recommendations

The recommendations below are designed to address the specific structural conditions identified in the findings, including the verification gap in economic reasoning, the thin review problem, and the mismatch between case complexity and institutional capacity. They are framed as complementary interventions rather than alternatives, each targeting a different node in the adjudicatory process.

4.4.1 Building Minimum Viable Economic Capacity at NCLAT

The verification gap cannot be closed by doctrinal innovation alone. If the appellate tribunal lacks the institutional resources to engage substantively with economic reasoning, no review standard, however well-articulated, will translate into rigorous scrutiny.²⁸ The objective should therefore be minimum viable economic capacity,²⁹ ensuring sufficient analytical competence³⁰ to test the adequacy of the CCI’s economic reasoning without transforming the NCLAT into a second competition authority.

Three measures are proposed. First, competition benches should include at least one member with demonstrable competence in competition economics, treated as a functional requirement for

²⁷ See generally, N Komesar, *Imperfect Alternatives: Choosing Institutions in Law, Economics, and Public Policy* (1996).

²⁸ M Baye & J Wright, “Is Antitrust Too Complicated for Generalist Judges? The Impact of Economic Complexity and Judicial Training on Appeals,” *Journal of Law and Economics* 54 (2011): 1, <https://doi.org/10.1086/652305>

²⁹ *Ibid.*

³⁰ Ministry of Finance, *Economic Survey 2025-26*, (Government of India, 2026), <https://www.indiabudget.gov.in/economicsurvey/doc/echapter.pdf> at p. 662.

digital platform appeals rather than an aspirational preference. Second, a small in-house economic research cell (comprising two to four staff economists) could produce neutral bench memoranda summarising the key economic issues, data claims, and counterfactual structures in the record. This would support scrutiny without introducing adversarial expertise. Third, in cases involving complex econometrics, algorithmic conduct, or multi-market leveraging theories, the NCLAT should have recourse to court-appointed neutral experts to clarify methodological questions, confined to technical elucidation rather than merits determination.

4.4.2 Making Economic Reasoning Reviewable at Source

The verification gap is not solely attributable to the appellate body. Economic-analytic compression may also result from how economic reasoning is structured in the regulatory record. If CCI orders embed economic analysis across hundreds of paragraphs without a clear inferential spine, appellate review is likely to default to summarisation.

Two reforms target this upstream problem. First, CCI final orders should include a structured economic issues matrix as an annexure, listing for each issue the theory of harm, the key evidence relied upon, the counterfactual employed, and the inferential steps connecting evidence to finding. This does not alter outcomes but makes meaningful scrutiny feasible. Second, where the DG's investigation relies on econometric or data-driven analysis, a brief methodological statement and limitations section should accompany the relevant findings, enabling appellate review to focus on reliability rather than attempting to reconstruct the model.

4.4.3 Structured Scrutiny Protocol

The thin reasoning finding suggests that the current appellate framework lacks a disciplined mechanism to ensure minimum engagement with the substance of CCI findings. A structured scrutiny protocol could address this by requiring explicit differentiation among three categories of questions, each tied to a defined review intensity.

Questions of pure law and jurisdiction (statutory interpretation, competence, procedure, limitation) should attract correctness review. Questions of economic fact-finding and technical inference (market definition evidence, multi-sided constraints, effects mechanisms, counterfactual plausibility) should attract error-correction review focused on evidentiary integrity and reasoning adequacy. In such cases, the appellate body should be required, at a minimum, to

state what economic reasoning it has accepted, what it has found deficient, and why.³¹ Questions of remedy and penalty calibration should attract legality review, supplemented by structured proportionality analysis that tests the nexus between the identified harm and the remedy imposed. This protocol would provide the NCLAT with a principled basis to demand clearer economic reasoning from the CCI where the record is thin, while preventing routine re-performance of predictive modelling.

4.4.4 Procedural Design for Time-Sensitive Digital Markets

Even where reasoning roles are well-calibrated, digital competition remedies are uniquely time-sensitive. Network effects, tipping dynamics, and ecosystem consolidation mean that delayed remedial intervention may be functionally equivalent to no intervention at all. A legality-oriented appellate posture that operates on standard timelines can unintentionally neutralise regulatory action through delay.

Two procedural reforms are proposed. First, a fast-track docketing category should be created for digital platform appeals where remedies have a time-sensitive market-corrective function. Second, stay applications in competition appeals should be governed by structured principles requiring explicit consideration of the time-sensitivity of the identified harm, the reversibility of the remedy, the risk of market tipping during pendency, and the balance of convenience, rather than default stays that function as de facto reversal.

³¹ M Bernatt, “Effectiveness of Judicial Review in the Polish Competition Law System and the Place for Judicial Deference,” *Yearbook of Antitrust and Regulatory Studies* 9 (2016). <https://ssrn.com/abstract=2896823>

Chapter 5: Conclusion

This study set out to examine whether differences in institutional design between the Competition Commission of India and the National Company Law Appellate Tribunal correspond to observable differences in how competition questions are reasoned at each level. The evidence indicates that they do, and that the nature of the difference is both more specific and more structurally informative than a simple narrative of institutional deficiency or appellate incapacity would suggest.

The biaxial mapping of 35 issue pairs across seven digital platform cases reveals a consistent pattern: economic-analytic reasoning compresses at the appellate level, while legal-doctrinal reasoning undergoes internal recomposition rather than uniform intensification. This compression is driven by reduced operational use of economic concepts, and attenuated effects and counterfactual analysis. The recomposition takes a distinct form, with doctrinal formalism and categorical reasoning intensifying, while normative framing, rights-based reasoning, and formal proportionality review decline. At the same time, epistemic deference to the regulator increases alongside the reduction of substantive economic engagement, producing a condition of deference without verification that sits uneasily with the Supreme Court's model of structured appellate scrutiny.

These findings do not support the conclusion that the NCLAT is institutionally incapable of reviewing competition decisions. The data show instances of substantial appellate engagement, issues where the NCLAT generated reasoning that the CCI did not address, and cases where economic-analytic scores were at or near parity. The pattern is therefore not one of uniform failure, but of a structural tendency for appellate reasoning to gravitate toward doctrinal categorisation and summary deference—particularly in cases where economic theories of harm are most complex and the stakes of appellate oversight are correspondingly highest.

The contribution of the study is both methodological and substantive. The biaxial mapping framework translates abstract debates about expertise, deference, and institutional capacity into observable dimensions of adjudicatory reasoning. By decomposing reasoning into economic-analytic and legal-doctrinal axes, and further into their constituent sub-dimensions, the framework makes it possible to identify not merely whether reasoning differs across institutions

but how it differs and where these differences are concentrated. This approach may have application beyond the CCI-NCLAT context, in any regulatory system where layered adjudication distributes reasoning functions across institutional levels with differing design features and expertise profiles.

The normative implication of the findings is not that the NCLAT should become a second CCI. A mature regulatory state does not seek uniformity of reasoning across institutions; rather, it distributes reasoning functions across institutional levels, with economic analysis concentrated at the regulatory stage and legal structuring emphasised at appeal. The question is whether this distribution is functioning as designed, or whether it has produced a condition in which appellate review operates at reduced analytical depth without a compensating increase in doctrinal rigour. The evidence points toward the latter in a non-trivial proportion of the issues examined.

The policy challenge is therefore one of calibration rather than convergence. The appellate tribunal need not replicate the regulator's economic analysis, but it must be equipped to verify whether that analysis is adequate, coherent, and responsive to the evidence. This requires targeted institutional investment, including economic expertise on competition benches, structured record design at the regulatory level, scrutiny protocols that differentiate review intensity by question type, and procedural mechanisms that account for the temporal dynamics of digital markets. These are not radical reforms, but calibrated adjustments to the institutional interface between regulator and appellate body, aimed at ensuring that role differentiation generates disciplined accountability rather than thin review.

The study operates within acknowledged constraints. The corpus is limited to digital platform cases and cannot claim statistical generalisability across all competition appeals. The coding captures reasoning as expressed in orders rather than deliberative processes internal to institutions. The analysis is descriptive rather than causal. Nonetheless, the consistency of the observed patterns across cases, issue types, and reasoning sub-dimensions supports the inference that they reflect institutional conditions rather than idiosyncratic variation.

Competition adjudication in digital markets will only become more analytically demanding. Network effects, algorithmic pricing, ecosystem leveraging, and data-driven market power present theories of harm that depend on probabilistic reasoning, counterfactual construction, and

multi-market mechanism tracing. The architecture of appellate review must evolve to meet these demands. The findings of this study suggest that the current institutional configuration, while not fundamentally broken, requires conscious recalibration if appellate oversight is to function as a meaningful check on regulatory reasoning rather than a procedural formality. The coherence of Indian competition adjudication in the coming decade will depend on whether the system manages this recalibration with the precision that the complexity of digital markets demands.

Annexure 1

Cases used for the biaxial mapping

Doc_id: researcher assigned ID for each case to aid in the identification of the issues. Issues in a case are labelled as A, B, C and so on, with the issue identifier in its combined form in the format of ‘number alphabet’ (eg: 1A, 2D, 3F, etc.).

Institution: refers to the institution/forum the order is coming from (either CCI or NCLAT in this case).

doc_id	institution	case_name	document_type	Date of order
CCI_1	CCI	In Re Whatsapp LLC ³²	Final Order	18/11/2024
NCLAT_1	NCLAT	In Re WhatsApp LLC ³³	Appellate Order	04/11/2025
CCI_2	CCI	In re Google v. CCI and Umar Javeed ³⁴	Final Order	20/10/2022
NCLAT_2	NCLAT	In re Google v. CCI and Umar Javeed ³⁵	Appellate Order	29/03/2023

³² *In re Updated Terms of Service and Privacy Policy for WhatsApp Users*, Suo Motu Case No. 01 of 2021 with Case No. 05 & 30 of 2021, Competition Comm’n of India, Order (Nov. 18, 2024), <https://www.cci.gov.in/images/antitrustorder/en/order1732001619.pdf>.

³³ *WhatsApp LLC v. Competition Comm’n of India*, Competition Appeal (AT) No. 01 of 2025, Nat’l Co. Law App. Trib., Order (Nov. 4, 2025).

³⁴ *Umar Javeed v. Google LLC*, Case No. 39 of 2018, Competition Comm’n of India, Order (Oct. 20, 2022), <https://www.cci.gov.in/images/antitrustorder/en/order1666344260.pdf>.

³⁵ *Google LLC v. Competition Comm’n of India*, Competition Appeal (AT) No. 01 of 2023, Nat’l Co. Law App. Trib., Order (Mar. 29, 2023).

CCI_3	CCI	Alphabet Inc. and Ors. v. CCI ³⁶	Final Order	25/10/2022
NCLAT_3	NCLAT	Alphabet Inc. and Ors. v. CCI ³⁷	Appellate Order	28/03/2025
CCI_4	CCI	Fast Track and Meru ³⁸	Final Order	19/07/2017
NCLAT_4	NCLAT	Fast Track and Meru ³⁹	Appellate Order	07/01/2022
CCI_5	CCI	Vinod Gupta v. WhatsApp ⁴⁰	Final Order	01/06/2017
NCLAT_5	NCLAT	Vinod Gupta v. WhatsApp ⁴¹	Appellate Order	02/08/2022

³⁶ *In re Google Play Billing Policies*, Case No. 7, 14 & 35 of 2018, Competition Comm'n of India, Order (Oct. 25, 2022), <https://www.cci.gov.in/images/antitrustorder/en/order1666696935.pdf>.

³⁷ *Google LLC v. Competition Comm'n of India*, Competition Appeal (AT) No. 04 of 2023, Nat'l Co. Law App. Trib., Order (Mar. 28, 2025), https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzIwMjUtMDMtMjYyY291cnRzLzEvZGFpbHkvMTc0NDgwNzE1OTk1Mzk0MjI1NzY3ZmZhNGY3MmQ1YzEuGRm.

³⁸ *Fast Track Call Cab Pvt. Ltd. v. ANI Techs. Pvt. Ltd.*, Case Nos. 6 & 74 of 2015, Competition Comm'n of India, Order (19 July 2017), <https://www.cci.gov.in/images/antitrustorder/en/62015-and-7420151652259825.pdf>.

³⁹ *Fast Track Call Cab Pvt. Ltd. v. Competition Comm'n of India*, Competition Appeal (AT) No. 19 & 20 of 2017, Nat'l Co. Law App. Trib., Order (Jan. 7, 2022), https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzIwMjUtMDMtMDcvY291cnRzLzQvZGFpbHkvMTY0MTU1MDgwODM1MDk5MjI0ODYxZDgxM2Q4YTlIwYTYucGRm.

⁴⁰ *Vinod Kumar Gupta v. WhatsApp Inc.*, Case No. 99 of 2016, Competition Comm'n of India, Order (1 June 2017), <https://www.cci.gov.in/images/antitrustorder/en/9920161652338476.pdf>.

⁴¹ *Vinod Kumar Gupta v. Competition Comm'n of India*, Competition Appeal (AT) No. 13 of 2017, Nat'l Co. Law App. Trib., Order (Aug. 2, 2022), https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzIwMjUtMDgtMDIvY291cnRzLzIvZGFpbHkvMTY1OTQzOTMzNjE0NjQ1OTMyNDY2MmU5MDhlODQxOWZjLnBkZg==.

CCI_6	CCI	Samir Agrawal v. ANI Technologies ⁴²	Final Order	06/11/2018
NCLAT_6	NCLAT	Samir Agrawal v. ANI Technologies ⁴³	Appellate Order	29/05/2020
CCI_7	CCI	All India Online Vendors Association v. Flipkart ⁴⁴	Final Order	06/11/2018
NCLAT_7	NCLAT	All India Online Vendors Association v. Flipkart ⁴⁵	Appellate Order	04/03/2020

⁴² *Samir Agrawal v. ANI Techs. Pvt. Ltd.*, Case No. 37 of 2018, Competition Comm'n of India, Order (6 November 2018), <https://www.cci.gov.in/images/antitrustorder/en/3720181652328966.pdf>.

⁴³ *Samir Agrawal v. Competition Comm'n of India*, Competition Appeal (AT) No. 11 of 2019, Nat'l Co. Law App. Trib., Order (29 May 2020), https://images.assettype.com/barandbench/2020-06/54c266ed-44b6-4aca-8206-304ee83ba08d/Samir_Agrawal_vs_CCI_Ola_uber.pdf.

⁴⁴ *All India Online Vendors Ass'n v. Flipkart India Pvt. Ltd.*, Case No. 20 of 2018, Competition Comm'n of India, Order (Nov. 6, 2018), <https://www.cci.gov.in/images/antitrustorder/en/2020181652328846.pdf>.

⁴⁵ *Flipkart Internet Pvt. Ltd. v. Competition Comm'n of India*, Competition Appeal (AT) No. 16 of 2019, Nat'l Co. Law App. Trib., Order (4 March 2020), <https://nclat.nic.in/sites/default/files/migration/upload/11494396055e60c6bc5dcc4.pdf>.