Global penalties, Local harm: Why economic theory disfavours global turnover-based fines under India's competition law

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Abstract

The implementation of global penalty under the Competition Act, 2002 through the Competition (Amendment) Act, 2023 has raised concerns among competition law academics and practitioners. This revision marks a significant departure from the relevant turnover doctrine based on the ruling in Excel Crop Care Ltd. v. CCI, raising concerns over proportionality and economic coherence. The legislative change creates a structural disconnect between an act within a constrained economic context, geographically within India, and the ambit of sanctions imposed globally. This paper challenges this trend by attempting to reconcile global turnover linked sanctions with legal theory and economic tools. This involves deterrence theory, optimal fine determination, proportionality norms, and marginal harm analysis to suggest that global turnover linked penalties may be economically unviable and legally unsustainable. This paper adopts a doctrinal and law and economics methodology, analysing Indian and comparative approaches to global turnover based penalties. The paper contends that the prevailing policy risks chilling innovation and investment, creates tensions with competitive neutrality, and weakens the territorially grounded orientation of the Competition Act, 2002. It argues for a penalty model grounded in harm attribution rather than enterprise size to restore proportionality and regulatory legitimacy.

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1. Introduction

The current issue of turnover-based fines in India has a clear practical relevance with Apple's recent appeal before the Delhi High Court in connection with its challenge to the 2023 amendment to Section 27(b) of the Competition Act, 2002 (Competition Act, 2002, s. 27(b)) and the CCI's 2024 Monetary Penalty Guidelines to the extent that they allow antitrust penalties based on a company's global turnover rather than their practices in India (Bar & Bench, 2025). Yet in directly challenging the legal and proportional basis of global-turnover–based sanctions, an industry leader and data giant has transformed a matter once a mere question of academic and policy debate into one of practical constitutional and regulatory significance, with consequences not only for App Store operations at Apple Inc., but also for the overall treatment of Multi National Enterprises under Indian competition law (Business Standard, 2025).

With the increasing enforcement of anti-competitive behaviour by governments and regulators around the globe, turnover-based penalty regimes have resulted in extensive academic, judicial, and policy debate. The basic justification is deceptively simple in that by aligning monetary sanctions with the economic scale of offenders (either via their aggregate turnover or relevant turnover) the authorities seek to create monetary sanctions that are both significant enough in deterring wrongful behaviours but not so severe that economic activity or the innovation they intend is stymied (Srivastava, 2023). This is done so the fines increase according to the resources and the market access of the offender and in combination with the "ability to pay" and "harm-based" criteria (Ranjan & Chhabra, 2025). The method is based on fundamental law-and-economics theories - the proposed ideal fine needs to exceed expected gains due to the crime and need to adjust for the probable likelihood of detection (Wils, 2007).

Proportionality principle impedes arbitrary actions by regulatory bodies, as it requires them to assess sanctions so that they are in consonance not only with the seriousness and duration of the breach but also with the behaviour of the firm and the character of the market, including a few other factors. (Terlinden, 2025). Fines based on turnover, from structural-technical-economic perspective, reflect the regulatory goal of "internalizing externalities" the costs of the externalities caused by the anti-competitive practice should be met not by the market or the purchaser (Combe, 2006).

But it is notoriously difficult to put proportionality into practice. However, when the thresholds for fines are too low as is sometimes the case when we consider only "relevant turnover" for a product that at the relevant point in time is new or earning little regulatory action runs the danger of losing its deterrent effect (Srivastava, 2023). The one downside is that the use of global turnover as a penalty basis is too widespread and can result in excessive, even existential, fines, which commentators in various markets in Europe, India and the U.S., specifically now recognize and appreciate all too well (Wils, 2007; Schoon, 2024). In the cases involving multi-sided platforms and cross-subsidization or digital products (where market borders blur and revenue attribution is difficult), empirical findings and agency experience in the EU and India indicate that, in the end, the definition and tracing of "relevant turnover" present persistent challenges (Ranjan and Chhabra, 2025; Schoon, 2024).

Recognizing such issues, regulators globally have begun adding thorough procedural guidelines to statutory turnover maxima for penalty determination. A well-known framework for these processes was provided by the European Commission's 2006 Guidelines consisting of a multi-step process starting from the value of sales in the affected market, adjusted for aggravating or mitigating factors, with a global turnover ceiling (Wils, 2007). The process aims for enterprises to be transparent and foreseeable and uses adjustment levers that capture seriousness, duration, intent, and cooperation with the authorities. Furthermore, giving guidelines not only disciplines the discretion of the agency but also increases legal certainty, which is a powerful accelerator of proactive compliance and reduces costly litigation (Wils, 2007).

This also is seen in recent amendments in Indian law. The 2024 Monetary Penalty Guidelines of the CCI aim to move regulatory ad hocism in the following direction: 1) starting with relevant turnover; 2) proportionality considerations; 3) using global turnover only where proportional or deterrence reasons for this are required (Competition Commission of India [CCI], 2024a);(Veritas Legal, 2024) (Metalegal, 2025). This innovation has embedded India's enforcement philosophy with world-established best practice, so that it binding discretion, and counterbalances apprehension of arbitrariness, or an unplanned escalation of penalties (Metalegal, 2025). While the Guidelines approach, consistent with EU procedural methods is reflective of a maturity in regulation, ongoing dialogue with affected parties, together with the judicial body itself, is certainly required for enforcement refinement (Terlinden, 2025). We've made some progress, but that's certainly not enough.

The issue becomes more serious when platforms and conglomerates are involved in antitrust law actions. However, the principle of proportionality must be applied with sufficient care to balance the broader policy requirement of high deterrence, particularly in cases involving recalcitrant and repeat offenders (Combe, 2006); (Terlinden, 2025). Scholarly literature suggests that optimal case is to incorporate "*hybrid*" regime. Under this regime, the focus is shifted toward fact specific assessment of market harm as the anchoring principle. Additionally, statutory caps operate as ultimate safeguard rather than decisive determinant of penalty determination (Schoon, 2024). Existing scholarship on turnover-based penalties under competition law has largely focused on the doctrinal transition from relevant turnover to global turnover. However, limited attention has been devoted to examining whether the shift is compatible with the economic foundations of antitrust penalties, particularly the principles of optimal deterrence, proportionality, marginal harm attribution and territoriality. This paper seeks to address this gap by integrating legal analysis with economic theory.

Against this backdrop, this paper proceeds on three fronts. First, it maps the statutory and institutional framework governing the penalty regime under the Competition Act, 2002, along with the recent amendment and the CCI Guidelines. It also analyses the penalty regimes of the United States and the European Union in comparison with India. Second, the paper explores the economic underpinnings of the penalty framework and assesses the pre and post amendment regimes in mathematical terms, showing that global turnover linked penalty bases are mathematically incorrect and economically unviable. Third, it navigates the issues associated with the global turnover-based penalty regime in India and explicates its implications for the Indian legal regime and the economy as a whole.

2. Penalty bases in antitrust enforcement: a comparative framework of the united states, the European union and the Indian regime

Antitrust agencies across the globe are navigating their regime toward establishing a framework of penalty which combats anti-competitive conduct that ensures maximum effectiveness and optimal proportionality. This understanding underpins regulatory bodies and legislature to shape the competition law policy, be it India, EU and USA. However, there are significant variations in the terms of economic methodology and practical outcomes when it translates into broader policy. Despite sharing similar theoretical perspective regarding deterrence, each jurisdiction's specific legislative architecture reflects distinct approaches to balance market harm against enforcement powers. These approaches are shaped by specific economic ideology of that jurisdiction whether it views turnover as proxy for deterrence or it a redistributive function. A fundamental economic rationale has held up and is universally known, that fines have to be more than the expected benefits of anticompetitive behaviour to deter rational agents from engaging in wrongdoing (De la Mano & Durand, 2023). It is not a simple task of figuring a number for fines to be just and effective, the economic value of the violation as well as the legal necessity of a proportionate calculation between the punitive penalties and the good must be respected (Marques & Rodrigues, 2023).

Internationally, the US is known for its comprehensive and empirical foundations. The penalty is typically proportionate based on the "volume of commerce affected" in accordance with the Sherman Act (Sherman Antitrust Act, 1890) and US Sentencing Guidelines (U.S. Sentencing Commission, 2024); for criminal fines the penalty may be double the unlawful gain or loss resulting from the offense (Department of Justice, 2024; Fox, 2022). The traditional competition law and economics scholarship asserts that linking punishment to measurable market harm ensures that the regulatory costs of unlawful conduct are borne by the infringing parties themselves. The magnitude of such costs must be aligned with the extent of harm caused by the infringer in the market. (Connor & Lande, 2023).

The penalty base in US is limited to affected commerce, it prevents penalties from spilling over to unrelated activities. It also focuses on harm, including robust individual-level sanctions, with the threat of criminal liability for executives expected to enhance organizational compliance incentives. The United States approach demonstrates a strong commitment to the harm principle. The penalty remains linked to affected commerce rather than enterprise size. Consequently, deterrence is achieved while preserving a direct relationship between sanction and injury.

In the European Union, the 'value of sales' is determined within a system which has a statutory global turnover cap. This is an attempt to accommodate the economic logic of the US model, but also consider proportionality and the ability to pay (Schoon, 2024). The penalty is determined by looking at this relevant turnover, i.e. the amount of sales of goods and services associated with the violation within the European Economic Area (EEA). This evaluation is then used to determine the scale of changes made based on the severity and duration of the offending conduct (Marques & Rodrigues, 2023). Unlike the US model, built through a harm-based approach, the EU model differs from its peers in that market turnover is not directly linked to consumer loss in practice. Rather than that, some acts including cartel participation may trigger fixed gravity multipliers regardless of their implications for consumers.

Empirical evidence has however suggested that fines imposed in the EU have become harder and more effective over the past few decades, significantly reducing business uncertainty compared to the model set before (De la Mano & Durand, 2023). As a result of this, the statutory cap, which is set at 10% of the infringer's global turnover, represents an obstacle to overly punitive (or even just existential) sanctions. This point, of course, is an important one—something that policy can supplement by measures such as proportionality and a wider deterrent (Schoon, 2024). Although the European Union uses global turnover as a statutory ceiling, the actual methodology remains anchored to the value of sales associated with the infringement. Therefore, global turnover operates as a limitation on discretion rather than as an independent measure of liability.

India's landscape in the regulation of competition has transformed dramatically in recent years. In the first place, the Excel Crop case (*Excel Crop Care Ltd. v. Competition Commission of India*, 2017) established the judicial precedent that the penalty was connected to "relevant turnover", much like the EU emphasis on the linking of product and market. But policymakers ultimately found such an approach insufficient. Indian enforcement lessons show how fines solely on turnover from the affected market were too low to deter major multinational conglomerates, especially in high-growth sectors such as technology where Indian revenue accounts for a minuscule fraction of global operations (Ramkumar, 2023). With the Competition (Amendment) Act, 2023, which offered the Competition Commission of India (CCI) the power to impose fines of up to 10% of a company's global turnover, (Competition Act, 2002, s. 27(b), Explanation 2) it made its regulatory framework one of the most comprehensive in the world regarding anti-competitive behaviour (Krishnan & Shah, 2023). This change responds to the enforcement pressures regulators face in a more globalised economy, while revealing significant deviations in penalty frameworks. The conduct is comparable, meaning that fines in India can vary dramatically from those found in the EU or the US when domestic damage is limited but global sales are large (Chatterjee & Chakrabarti, 2023).

The economics and comparative scholarship question the nature of penalty bases that completely detach themselves from local harm. Using global turnover as the primary measurement, rather than merely as a statutory cap (such as the EU's), has the effect of diminishing the direct link between market impact and the magnitude of penalties (Kumar, 2022). This detachment adversely impacts foreign capital, the valuation of firms and drivers of cross-border innovation, both on a value and incentive basis due to companies trying to anticipate their risk based on the local risks in India (Dhir & Moorthy, 2023). The 2024 CCI Penalty Guidelines are beginning to respond to concerns about arbitrariness and judicial overload with penalty determination.

The regulatory framework is further supplemented by the Competition Commission of India (Determination of Turnover or Income) Regulations, 2024, which govern the determination of turnover or income for the purposes of penalty computation (Competition Commission of India [CCI], 2024b). The Monetary Penalty Guidelines, 2024, in turn, provide the methodology for determining the quantum of penalty (Competition Commission of India [CCI], 2024a). The new rules set out a gradual manner for calculating fines according to the relevant turnover of the impugned product or service, with weight to adjustments for gravity, mitigating/aggravating factors, and using only global turnover as a penalty cap or in exceptional circumstances where relevant turnover determination is not available or deterrence is deficient (Competition Commission of India [CCI], 2024a) (ELP Law, 2024; Law.asia, 2025). Therefore, the fundamental of this framework rests on transparency and predictability. It guides the regime to remain consistent with the principles of due process and proportionality.

Contemporary multi-sided digital platforms and conglomerates, poses common problem for all major jurisdictions. This includes a sharp demarcation of '*relevant turnover*' or '*affected commerce*' metrics in these dynamic new age markets (Schoon, 2024). That creates an ongoing tension and a trend, particularly in the EU, to periodically reassess penalty computation policy, as market realities and technological transition challenge traditional legal categories (Marques & Rodrigues, 2023). Curiously, while they diverge in how data is collected, all three regimes have the same underlying concern to protect the public interest, rather than suppress innovation or punish fair competition or the integrity of practices (De la Mano & Durand, 2023). Judicial review mechanisms have been invaluable along the way (albeit they are more assertive in the US and EU), offering infringers the possibility to contest outlier fines, offer evidence of inability to pay, or shine a light on inconsistencies or procedural weaknesses (Fox, 2022).

While the dominant academic consensus now favours what are termed 'hybrid' models, based on a fact-specific determination of harm in the relevant market as the penalty base, scaling up to the size of the enterprise as justified (e.g., repeat/multi-jurisdictional offences), and the provision of transparent caps and reductions for mitigating factors (Connor & Lande, 2023). It is also economically sensible, and gives firms the incentive not only to make compliance investments commensurate with the market risk base, but also to set a common and rational expectation on multinational behaviour (De la Mano & Durand, 2023). When we examine the methods of using turnover fines in a combined manner between India, the EU and the US, it is evident that deterrence and proportionality are principles in every country, the application of penalty bases however varying significantly in terms of predictability, fairness and economic efficacy. While the US's strict harm-linked approach, the EU's balance of market and firm size and India's deterrence-oriented but risk-laden regime hint that the problem lies not just with what 'turnover' is but how it links the principles of justice, economic rationality and the constantly changing frontier of competition policy.

3. Law & economics framework for evaluating global turnover–based penalty regime: a critique of economic viability under the competition act, 2002

As we demonstrate in the previous section, the comparative analysis reveals that while the United States, the European Union and India all employ the normative language of deterrence and proportionality, their applications of turnover in the calculation of antitrust sanctions differ substantially. These differences correspond to varying expectations in terms of how close the penalties must match the actual market damage of the breach. So, when looking at the economic coherence of India's recent statutory drift toward a global turnover base, we must do more than doctrinal comparison and we must consider whether such a metric might serve to achieve an efficient deterrent in a territorially bounded competition regime. In a traditional law-and-economics approach, fines serve a dual, but closely connected, goal: to eliminate the private incentives of the offender to commit socially harmful actions, and in a way that is proportionate to the degree of the domestic harm. In this light, appropriate sanction is expected illicit gain adjusted for the potential of detection taking into account and internalizing the negative externalities of anticompetitive conduct (Becker, 1968). But now widespread enforcement, across a number of jurisdictions, has shifted to turnover-based formulations, with the EU's global turnover cap and most recently the statutory sanctioning of penalties linked to worldwide revenue applied to a variety of jurisdictions – the most significant of which recently came in India.

The section outlines therefore constitutes a concise model of deterrence to establish whether a global turnover base constitutes the harm–sanction nexus of Indian law. The model is intentionally simplified, and is designed purely to demonstrate the point at which the economic relationships are foundational, not as a full structural model of multinational trade. It operates under the assumption of a unitary product company that clearly distinguishes between domestic turnover and global operations and not the intricacies like conglomerate/diversified company, multi product company or multi sided digital platforms. These limitations are deliberate, so we may consider the underlying logic and explore the underlying logic without a confounding variable.

3.1 The Economic Logic of Deterrence: Baseline Theory and Variables

The basic deterrence identity used throughout is Becker's expected cost condition:

$$p \times F \ = \ G$$

where p is the probability of detection and successful sanction, $F$is the monetary penalty and G is the private gain from the illicit conduct (Becker, 1968). A welfare motivated extension, by Landes and Posner, recognises that the socially appropriate sanction should reflect expected social harm H (overcharge plus deadweight loss) and should be adjusted for the probability of detection and any efficiency gains to the firm (Landes & Posner, 1983).
Polinsky and Shavell formalise the trade-off between the magnitude of fines and the resources required to increase p, emphasising low-probability/high-penalty equilibria as empirically common (Polinsky & Shavell, 2000). Optimal deterrence theory prescribes that fines track offense specific variables such as harm or illicit gain adjusted for enforcement probability; they must not be indexed to offender traits such as total income or global scale because those traits are orthogonal to the marginal harm caused by a local infringement. Modern scholarship has expanded optimal deterrence theory beyond the traditional expected cost framework. Contemporary competition law scholarship emphasises proportionality, legal certainty, innovation incentives, compliance costs and dynamic efficiency as relevant determinants of penalty design. Accordingly, an economically coherent penalty regime must not merely deter unlawful conduct but must also preserve incentives for productive investment and innovation.
For present purposes define the variables that will be used in the model:

- p= probability of detection and successful sanction in the relevant jurisdiction.

- F= fine imposed by the regulator.
- G= private gain from the illegal conduct attributable to the relevant market (domestic gain).
- T_i= turnover of the enterprise in the domestic market (India).
- T_g= global turnover of the enterprise (worldwide sales).
- β= ratio of illegal gain to turnover in the relevant market (i.e., $G = \beta T_i$).
- α= domestic share of global turnover, $\alpha = T_i/T_g$(so $0 < \alpha \leq 1$).

To operationalise this deterrence logic in competition law, it is necessary to express the illegal gain G in market-measurable variables. Suppose a firm operating under perfect competitive conditions sells its product at price P_c with marginal cost C and earning sales of quantity Q_c. Following collusion or an abuse of dominance, the firm increases the price to P_m and reduces output to Q_m. The resulting incremental and unlawful profit, representing the private gain from the conduct, is approximately:

$$G = (P_m - P_c)Q_m$$

The total turnover of a single product firm in the affected (relevant) market is:

$$T_i = P_m Q_m$$

Hence, the illegal gain can be expressed as:

$$G = T_i(\frac{P_m - P_c}{P_m})$$

Define the overcharge ratio as:

$$\beta = \frac{P_m - P_c}{P_m}$$

This β measures the proportion of each unit of turnover that represents unlawful gain — effectively quantifying the intensity of the violation. Therefore:

$$G = \beta T_i$$

Substituting this expression into Becker's deterrence identity gives the optimal fine required for efficient deterrence:

$$F^* = \frac{G}{p} = \frac{\beta T_i}{p}$$

3.2 Constructing the model: why substituting global turnover miscalibrates deterrence

Where legal rules substitute global turnover for domestic turnover the regulator effectively computes a fine on the basis of T_g rather than T_i. The global-based sanction would therefore be

$$F_{global} = \frac{\beta T_g}{p}$$

Using $\alpha = T_i/T_g$, we can write

$$F_{global} = \frac{\beta T_i}{\alpha p} = \frac{1}{\alpha} \times F^*$$

Thus, the multiplier $\frac{1}{\alpha}$ (the inverse of the domestic share of global turnover) scales the domestically optimal fine. When the infringing activity is local and α is small (as is often the case for multinational enterprises with limited sales in India), F_{global} will far exceed the domestically optimal sanction. Economically, therefore, the global base produces systematic over-deterrence: expected corporate cost pF_{global} will be much greater than G, i.e.,

$$pF_{global} = \beta T_g = \frac{G}{\alpha} > G, \text{ if } \alpha < 1.$$

Conversely, to the extent a regulator's statutory cap or formula uses global turnover but imposes only a fraction of that amount (for example a capped percentage), under-deterrence may result in cases where p is low and the chosen fraction does not restore pF to G. The global base therefore introduces two failure modes:

(i) a likely explosive over-deterrence for small α; and

(ii) unpredictable under-deterrence where the mapping from global base to actual monetary sanction is administratively constrained.

3.3 Variable Detection Probability and Heterogeneity Across Firms

The previously described model considers p as exogenous; in reality, p is variable and a function of enforcement resources, firm size, and international cooperation. Polinsky and Shavell (and following literature) emphasize that low probabilities of detection in conjunction with resource constraints justify larger sanctions in expectation, provided that sanctions are proportionate to the harm involved and do not create perverse incentives (Polinsky & Shavell, 2000). Motchenkova's dynamic methodology shows that penalty schedules which ignore the interaction between enforcement intensity and sanction magnitude are incapable of sustaining full compliance equilibria over time. An optimal penalty rule must therefore account for the temporal path of the probability of detection *p(t)* and the enforcement authority's cost of increasing *p*. Replacing a market anchored penalty base with a global turnover base without considering the cross-border profile of *p*, which typically declines with jurisdictional fragmentation, further aggravates this calibration error. In such circumstances, a regulator may impose an excessively large fine while the probability of detection remains low. Thereby, resulting in sanctions that exceed the socially optimal level of deterrence and generate deadweight welfare losses.

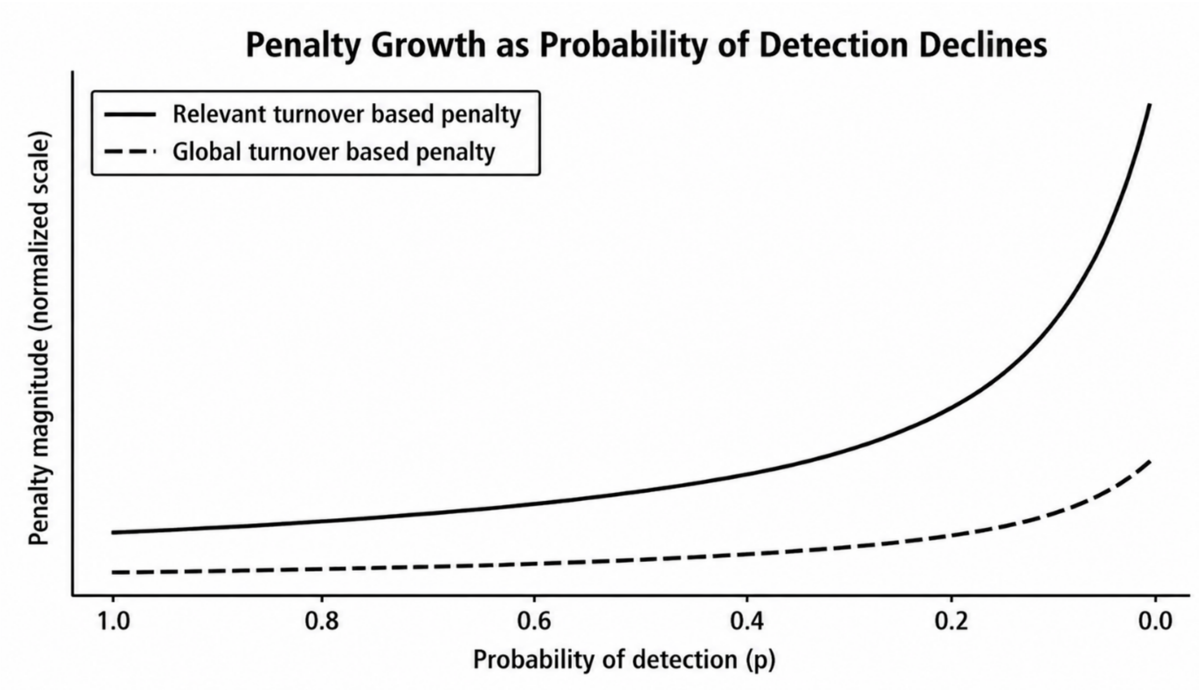

Fig 1. The figure is illustrative and is generated using hypothetical values solely for demonstrating the theoretical relationship between probability of detection and sanction magnitude under alternative penalty bases. It does not represent actual enforcement data.

Source: Authors' own construction.

3.4 Comparative and Doctrinal Context: EU, U.S., and India

The EU's statutory maximum expression as a percentage of global turnover (Article 23(2), Regulation 1/2003) is supplemented by in-depth Guidelines on the manner in which Fines are levied. (Council Regulation (EC) No. 1/2003, art. 23(2)) When the market affected is genuinely global and damage is distributed by jurisdiction, then it can be contended that the global base is commensurate with aggregating harms. But EU guidelines also incorporate adjustments to be found in the turnover "involved in the infringement" and in the gravity of the offence; the formal scheme thus establishes an obligatory connection back to the victim's market.

Criminal enforcement in the United States has traditionally been based on affected commerce and the gravity of the offence (and supplemental punishment via individual sanctions), in contrast to the approach adopted to make it close to a domestic harm base. (Sherman Antitrust Act, 1890; U.S. Sentencing Commission, 2024; Ginsburg & Wright, 2010) Section 27(b) of the Indian Act and the latest Competition (Amendment) Act, 2023 in India provide some statutory language allowing for global turnover in certain circumstances; Indian jurisprudence (such as the controversy in Excel Crop Care and its related administrative practice) highlights the tension between past "relevant turnover" readings and the new, statutory prospect of a global base. The Supreme Court's judgment in Excel Crop Care crystallised that relevant turnover principle as a judicial check on disproportionate punishment and grounded the penalty calculus in territoriality of harm rather than size of the enterprise's global reach. The doctrinal issue lies in the fact that global turnover deviates from the object of India in statutes, preserving competition in Indian markets, and risks breaking administrative law principles of proportionality and predictability unless it is closely cabined. The comparative analysis reveals that neither the United States nor the European Union employs global turnover as the primary determinant of sanctions in ordinary competition cases. Rather, both jurisdictions maintain a direct connection between the infringement and the affected market. India's post-2023 framework therefore represents a significant departure from prevailing international practice.

3.5 Theoretical and Practical Unviability of a Global Turnover Approach in India

Three points synthesise the central critique. First, economic optimality requires that the expected sanction be calibrated to the expected local gain and local social harm; a global base server that links and systematically inflates (or unpredictably deflates) the sanction relative to domestic harm undermines this principle. Second, the distributional consequences are retrogressive in terms of the competition policy, of which companies with a significant global footprint but a small domestic one face disproportionately high punishment costs in face of substantively small domestic misconduct, and which invite charges of forum shopping among the regulators, and which are perversive to the incentives towards investment. Third, given the pragmatic enforcement perspective, low enforcement probability that is varying and a global base implies socially costly equilibria, which is either excess over-deterrence or reduced administrative enforcement fines that would see cartel profits continue forth. These are findings that are congruent with normative theory of law-and-economics and empirical criticisms of turnover schemes.

The formal model demonstrates unambiguously that the fine designed to deter domestic anticompetitive behaviour should be a function of the expected domestic gain and the jurisdiction-specific probability of detection. Using global turnover as the default base overstates the relevant economic magnitudes by a factor of $1/\alpha$, thereby impeding the deterrence function and generating unacceptable distributive and efficiency costs. In the case of India, it can be prescribed the following policy: readjust the statutory methodology in a way that fines should be pegged on the turnover in the affected market, or on an empirically estimated measure of the penalty of overcharge and deadweight loss attributable to India; the use of global turnover multiples should not be exercised, but only when the violated market is truly global and the harm attributed to different jurisdictions is transparently modelled.

4. Challenges and structural risks in the global turnover penalty regime

4.1 The Chilling Effect of Global Penalty Bases on Innovation and Investment

India's Competition (Amendment) Act, 2023 expanded the penalty base from "*relevant*" domestic turnover to a firm's global turnover. (Competition Act, 2023, s. 27(b)) Under the new law, CCI may impose fines up to 10% of a firm's worldwide sales. (Competition (Amendment) Act, 2023) This reverses *Excel Crop Care Ltd. v. CCI* (2017), in which the Supreme Court held that "*turnover…should be construed as relevant turnover*" limited to the business directly involved in the infringement. (Excel Crop Care Ltd. v. Competition Commission of India, 2017) Critics note this change can produce disproportionate outcomes, for example, if global revenue far exceeds Indian business, a 10% global turnover fine could be "*unjustly disproportionate, hindering business operations in India*" (Banerjee, 2024).

Economic theory highlights why such heavy fines risk suppressing pro-competitive behaviour. In a seminal model, Hylton & Lin show that when a monopolist's innovation creates positive spillovers, the usual rule of internalizing consumer harm is no longer optimal (Hylton & Lin, 2014). In their dynamic framework, punishing firms as if operating on a static welfare loss ignores the value of market-expanding R&D. In fact, they conclude that optimal penalties may be far more lenient or even zero: "*in light of the benefits from innovation, the optimal policy will punish monopolizing firms more leniently… It may be optimal to not punish the monopolizing firm at all*." Conversely, a draconian fine steal away almost all gains from innovation and so deters the investment in the first place. Enforcement authorities should exercise "*a bit more caution or forbearance*" when high penalties would otherwise eliminate an innovator's returns (Hylton & Lin, 2014). Similarly, it would also not be incorrect to assert that when markets are imperfect, imposing high fines on companies inevitably affects all of the firm's stakeholders (Wils, 2006).

International precedent reflects the same balancing test. The OECD warns that fines "*are not infallible*", if set high enough to ensure full deterrence, "*many companies could face financial difficulties, which could undermine competition in the market.*" (OECD, 2014). Likewise, "*while fines can be an effective deterrent mechanism, excessive fines may undermine competition*" by harming shareholders, employees or even consumers (if costs are passed on). (OECD, 2014) The EU Commission similarly notes that when a dominant firm's conduct weakens rivals, competitors become "*less willing to carry out significant investments in research and development*," so that "*damage to innovation is likely to occur.*" The concern is not theoretical alone. U.S. courts have explicitly cited an innovation chill as a reason to limit antitrust liability: in *Verizon v. Trinko*, the Supreme Court invoked the "*negative innovation effect*" of overbroad liability when rejecting an "*essential facilities*" claim (*Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 2004).

Combined, these insights warn that India's global turnover penalty regime may be chilling entrepreneurial risk taking and innovation. Punishing global revenue, without a clear link to doing harm at home, might discourage multinationals from introducing new offerings or platforms in India. The Amendment Act has even included "turnover" in cartel cases, meaning the firm's complete, global revenues, magnifying this risk. Conversely, the Supreme Court in Excel Crop emphasized proportionality and clear interpretation to avoid hitting multi-producers too hard. Perhaps the way to go forward: for regulators to limit global fines in practice, limiting their scope to revenue linked to India or using "inability to pay" calculations, as the European Union does. Antitrust punishments need to discourage abuse and protect incentive structures for innovation. As Hylton & Lin note, enforcement is most often effective when substantial value of innovation is at stake. Without that care, the new global turnover limit threatens to penalize ambitious growth and investment, precisely the opposite of what a competition regime exists to do.

4.2 Territorial Limitation of Dominant Position and The Global Penalty: A Paradox of Proportionality

Section 4 of the Competition Act expressly confines to the "relevant market in India, "for the inquiry into dominance, thereby linking both remedial and liability measures to territorial effects on Indian markets.[18] The concurrent authorization of the Amendment Act to derive a penalty base on an undertaking's global turnover results in a stark paradox: the substantive wrong is defined by local market power and local harm, whereas the punitive instrument calculates culpability by reference to global turnover (Srivastava, 2023). That disjunction severs the ordinary legal nexus between offence and sanction and immediately raises questions of proportionality and foreseeability (Srivastava, 2023).

Proportionality requires a rational relationship between the gravity and territorial extent of the wrong and the scale of the sanction; a global-turnover base instead calibrates punishment based on the offender's characteristics — size, product diversification, and export intensity — largely orthogonal to the local injury. Imposing extremely high fines when the likelihood of detecting and penalizing misconduct is low violates the principle that penalties must be proportionate to the offence (Wils, 2006). The Supreme Court in *Excel Crop Care Ltd. v. CCI* has also endorsed a relevant-turnover approach precisely to avoid disproportionate outcomes and to preserve predictable penalty exposure tied to the infringing business.19 Allowing global turnover as an operative base, then, risks undoing that judicial safeguard and invites challenges grounded in arbitrariness and irrationality. 20 Comparative practice offers useful guardrails.

The European Commission treats a percentage of worldwide turnover as a statutory ceiling but constructs the operative fine by reference to turnover "involved in the infringement" and by adjusting for gravity and duration; the global cap is an outer bound—not the default metric for local harm. OECD analyses likewise stress calibration and market-linkage as essential for legitimate fine setting. By contrast, India's statutory text now authorises global turnover without mandatory apportionment rules thereby departing from these calibrating practices and increasing the risk that penalties will lack the requisite territorial nexus.

Restoring doctrinal alignment need not weaken enforcement. At minimum, implementing rules should require: (a) prima facie showing that the infringement and resultant harm are transnational before any global revenue is considered; (b) a transparent market-by-market apportionment methodology that ties any global base back to India-specific turnover or apportioned harm; and (c) express judicial-reviewable safeguards to ensure proportionality and foreseeability in each case. Without these constraints, the global-turnover option will remain an instrument that dislocates liability from harm and weakens the rule-of-law foundations of India's competition regime.

4.3 Methodological Incoherence in CCI Penalty Practice and The Systemic Risks of Global Turnover Sanctions

A review of over a decade of penalty decisions under Sections 3 and 4 of the Competition Act shows that the Competition Commission of India (CCI) has not implemented a stable, principled or proportionate penalty methodology yet (Abraham & Marvão, 2022). An international turnover baseline applied to this volatile domain would escalate uncertainty and create a greater threat of excessive and constitutionally precarious punishments. Existing empirical work indicates that CCI has consistently diverged from the statutory penalty structure in cartel cases. While Parliament does expressly provide a profit-based penalty of up to three times the profit per year of the cartel, within CCI it has exercised this metric in a limited sense, and instead used a controlling percentage of cases on average turnover of the previous three years, a metric originally for non-cartel infringements (Abraham & Marvão, 2022). Almost two-thirds of the cartel decisions examined applied this misaligned approach which was validated via quantitative analysis. Penalty intensity too varies wildly without principled explanation. Most fines in cartel cases are still well below three percent of turnover; well under the statutory limit of ten percent per year of violations — even where collusion is being investigated with regard to public procurement and essential goods. The Commission, however, had a nine or ten percent penalty in some cases simply due to an absolute turnover of little magnitude with final penalties amounting to fewer than one crore rupees (AZB Partners, 2019), a consequence unlikely for deterrents of subsequent wrongdoing. India's leniency regime and its empirical evidence confirm that the penalty system of the Competition Commission of India's (CCI) is already inefficient and not preventative at all when applied concerning relevant turnover (Abraham & Marvão, 2022). Most cartelists have managed to keep more than 80 percent of the statutory maximum fines, while repeat offenders have received even fewer comparative sanctions (Abraham & Marvão, 2022). Since penalty metrics change in unpredictable ways, and reductions in leniency cannot be calibrated, businesses can't predict sanction consequences. This assessment is hampered by the uneven application and punishment rate of CCI penalties. Fines are considerably below optimal levels for the analysis of rough exploratory calculations of this kind. It is obvious that penalties have certainly been much lower than what was permissible the authorities allowed (Bhattacharjea & De, 2021). In such a system with a base for penalties for all businesses doing business on a global level, setting turnover as the penalty rather than adjusting it to specific regions would not alleviate rather amplify an imbalance already present. Using unpredictable percentage rates on global turnover would in fact produce disproportionately large sanctions that are not tied to damage done in the Indian marketplace.

4.4 Regressive Dynamics of Global Turnover Penalties for Multiproduct and Multinational Firms

Analysts have demonstrated that turnover-based caps actually penalize conglomerates more severely. As a result, a fine linked to total revenue implies that a specialized firm, which sells only the infringing piece of goods, pays proportionately lower penalties than one with a multi-line firm with similar illicit profits (Bageri, Katsoulacos & Spagnolo, 2013). In practice, diversified multinational companies are often fined by a great deal and may be forced to inefficient under-diversification (Bageri, Katsoulacos & Spagnolo, 2013). This regressive effect creates perverse incentives on the part of large global firms where the responsibility of regulation falls on the big global firms and the small or concentrated ones (even where equally blameworthy) escape with small penalties (Srivastava, 2023). It may also deter MNEs from making investments in India or even entering into new product line development, since any local abuse could trigger a fine on the entire global enterprise. As the model showed, for a single product firm, punishing against global turnover as a penalty base result in systematic miscalibration and inefficiency. The distortion is further enhanced when the firm's product or part operates across various items or lines of business. Every other, irrelevant item adds a different line of goods to the global aggregate turnover from which it receives the penalty, and the penalty's quantum increases non-linearly with the magnitude of harm to the affected market. As a result, for multiproduct and diversification firms, global turnover-based fines grow exponentially, and bear no principled relationship to the domestic infringement.

5. Conclusion

The point of this paper has led to the conclusion that embedding global turnover within a territorially bound competitive system as the basis for punitive actions leads to a structural mismatch between the source of harm and its punishment. We demonstrate through a formal deterrence framework that in this type of scenario, substituting India-specific turnover with global revenue ratchets sanctions systematically up, such that India's share in a firm's international sales is inversely proportional to the total revenue generated from India and vice versa. This results in anticipated sanctions significantly higher than that of local crime, even social damage. Global turnover based fines in these situations are blunt instruments rather than calibrated rules to ensure an optimum deterrent effect, and expose the possibility of even heavier penalties for actions with economically-impactful local factors. This disconnect contradicts the principle of proportionality as expressed by Excel Crop Care, and can discredit the predictability and legitimacy which any viable competition regime should have in order to be legitimated. This comparison of EU to USA also further confirms that advanced antitrust regimes regard world turnover as at most a statutory ceiling or residual reference point and only allow for operative fines to be based on the impact to a market (e.g.--in a relevant market - commerce) or the value of sales. Both function within codified rules that connect penalties with the market dependent turnover, weight gravity, and duration, and both provide protections like "inability to pay" measures and strong judicial supervision.

India's revised Section 27(b), however, authorizes global turnover in respect of violations defined and investigated only within the markets in the "relevant markets in India" without the applicability for analogous apportionment and or imposed harm-linkage provisions in the law. The effect is a doctrinal paradox: Domination and abuse are territorial, but a punitive metric is extraterritorial indexed to size of the firm, not impact on the Indian market. The economic and institutional effects of such a design are hardly theoretical. For the large multinationals with little Indian presence, the threat of fines of as much as 10 per cent of global turnover can act as a huge disincentive not to expand operations, experiment with new business models or take on risky R&D that can have positive spill-over effects across inroads on Indian consumer behavior.

Also, empirical examinations of CCI's previous fining practice suggest an already unstable approach that relies on inconsistent statutory bases and that the intensity of the penalties varies widely across comparable cases. The implementation of a global turnover lever in this context will also heighten the possibility for outlier sanctions, charges of forum-shopping, and constitutional challenge on the basis of arbitrariness and disproportionality, without any evidence that under-deterrence issues will be remedied. On a higher level, a global turnover penalty regime jeopardises the normative character of Indian competition enforcement apart from being economically inefficiency. The function of antitrust is to correct and remedial; to restore competitive circumstances; to avoid the recurrence of unlawful conduct. It is not meant to redistribute wealth or to hold firms responsible simply for being large or global in size.

Some aspects of penalty architecture linked to global turnover might shift toward a "big fish" approach to enforcement, not applying sanctions as a calibrated response to the harm inflicted on consumers in the local Indian market. But where fines are indexed not by domestic injury but enterprise scale, the regime takes on the redistributive aspects of industrial policy/fiscal extraction rather than of justice for correction. In that context, at its core the normative position, the paper argues, is that India should not lose its penalties on the basis of turnover; it should reformulate them through a market-connected, harm-anchored architecture in which global turnover is used sparingly and transparently.

A consistent reform blueprint would: (a) reintroduce relevant turnover, or the empirical estimate of domestic overcharge, as the principal penalty basis; (b) restrict global turnover to cases of actual transnational violation or to a statutory cap role; and (c) embed certain parameters that can operationalize the concepts of proportionality, territorial nexus and predictability, under close judicial review. Such a hybrid model would place the Indian regime in line with best practice, sustain strong deterrence against serious cartels and abuses, whilst also avoiding the innovation-chilling, investment-distorting, and doctrinally fragile outcomes that are likely to result from a default global-turnover approach.

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