



THE WEST BENGAL NATIONAL  
UNIVERSITY OF JURIDICAL SCIENCES

# CENTRE REPORTS

CENTRE FOR COMPETITION  
LAWS



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**CENTRE FOR COMPETITION LAWS &**  
**SOCIETY FOR INTERNATIONAL TRADE AND**  
**COMPETITION LAW –**

**REPORT OF ACTIVITIES FROM FEBRUARY**  
**2020 TO MARCH 2024**

### **About CCL**

The Centre for Competition Laws, NUJS aims to serve as a forum exclusively dedicated to Competition Law that would enable the students, researchers and faculty members of NUJS to access and explore this booming area of law, as well as collaborate with the Competition Commission of India to conduct various activities for the promotion of awareness and generation of quality research on this discipline, such as research and consultancy projects, moot court competitions, seminars, conferences and lecture series.

In fulfilment of such objectives, the Centre has collaborated with the Competition Commission of India for several research projects, and coordinates related activities conducted by NUJS as an institution empanelled by the CCI. The Centre has already completed and submitted the final report for a research project titled “Competition Assessment of the Highways Sector” commissioned by the Competition Commission of India, as well as a research project on Crisis Cartels as a part of the NICE-Cartel Working Group (co-chaired by the Coordinator of the Centre) created by the CCI. It has also assisted the CCI in the translation of Competition Advocacy Booklets into regional languages. The Centre also organises the Annual CCI-NUJS Competition Law Moot Court Competition, through its student society, the Society for International Trade and Competition [SITC].

The detailed report of activities from February 2020 (the date of establishment of the Centre) till August 2022 is given below:

**1. The Centre for Competition Law successfully hosted the second edition of the CCI-NUJS National Moot Court Competition from 21<sup>st</sup> to 23rd February, 2020.**

The National University of Juridical Sciences successfully hosted the second edition of the CCI-NUJS National Moot Court Competition between 21st-23rd February, 2020. The event, a brain-child of the Competition Commission of India, was hosted by the Centre in collaboration with NUJS Society for International Trade and Competition Law (SITC). The competition aims to foster learning and development in the field of competition law and student advocacy, by exposing students to experienced practitioners and academicians in the field. It is a part of the Commission's mission to undertake competition advocacy, create public awareness and impart training on competition issues. The finals was a match between School of Law, Christ (Deemed to be University), Bangalore and Symbiosis Law School, Hyderabad (SLS). While Christ University bagged the winning trophy and a cash prize of INR 45,000, SLS, Hyderabad emerged as the runner up team winning INR 30,000 and also bagging the award for the Best Memorial worth INR 15,000. The award for the Best Speaker was won by Parinika Krishnan from Symbiosis Law School, Pune, who was awarded a cash prize of INR 10,000.





2. **The Centre for Competition Law, through its student society, the SITC, successfully conducted a panel discussion, on 4th July 2020 on the topic, ‘Current Crisis at the WTO’.** The panel comprised of R.V. Anuradha (Partner, Clarus Law Associates),

Deepak Raju (senior managing associate, SIDLEY) and James J. Nedumpara (Professor and Head of the Centre for Trade and Investment Law (CTIL)). The session was moderated by Ms. Pramiti Parwani. The discussion revolved around the WTO appellate body crisis and its solutions and alternatives. The discussion also analysed the legitimacy of the MPIA. The panellists also gave their opinions on the Indian government's position with respect to the crisis.

The panelists spoke about the Appellate Body (AB) crisis at the WTO and the subsequent formation of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). The seven-member AB requires a minimum of 3 members to constitute a panel to hear an appeal. However, in December 2019, with the retirement of two judges, only one member of the AB remains. While the AB cannot hear any new appeals, panel proceedings continue. Thus, the right to appeal panel disputes is temporarily paralyzed. An interim solution has been found in the MPIA, an arrangement under Section 25 of the Dispute Settlement Understanding (DSU) which allows arbitration as a dispute resolution mechanism.

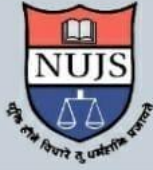
Mr. Deepak Raju first highlighted the history of the WTO crisis. He then discussed arbitration under Article 25 of the DSU, specifically examining the provisions of the MPIA. He discussed the MPIA's attempt to recreate a standing appellate body, the position of the Secretariat in the MPIA, its relationship with the Director-General and the WTO, and the issue of its funding. He also touched upon measures and countermeasures that might be adopted by the proponents of the MPIA while dealing with parties that misuse its provisions in light of Article 23 of the DSU, which effectively prohibits the use of such countermeasures.

Dr. James Nedumpara illustrated how the crisis was not just limited to an appellate body crisis, but could also signal a crisis in the multilateral trading system as a whole. He stated that the inability of the WTO to conclude agreements, like the Doha Round, was the biggest crisis. He highlighted several issues with the MPIA, and examined whether it is rational for an interim measure like this to continue for a long time and become the

new normal. He also discussed whether or not India should adopt the MPIA. He examined the value of panel reports after the MPIA came into force.

Ms. Anuradha highlighted how the MPIA could lead to greater unilateralism, undermining the entire dispute resolution mechanism. She critically examined the issues raised in the prior discussions and put forth several other criticisms. She expounded on how the EU, while making its proposal regarding the enforcement of international trade rules, drew legitimacy for its actions from the Draft Articles on Responsibility of States for Internationally Wrongful Acts, something that is not a part of customary international law. She scrutinized the merit of an alternate arrangement of not appealing to an AB and instead negotiating how the process of negotiation. She also discussed whether countries would, in fact, be able to break the persisting deadlock and reach a compromise on an alternate solution.

Further, the panellists discussed voting as an option instead of consensus; whether MPIA would function akin to the ISDS, and whether it would be possible for countries to resist the move away from multilateralism.



NUJS ONLINE LECTURE SERIES IN COLLABORATION WITH SITC



MS. RV ANURADHA  
PARTNER  
CLARUS LAW ASSOCIATES



MR. DEEPAK RAJU  
SENIOR ASSOCIATE  
SIDLEY AUSTIN LLP



DR. JAMES NEDUMPARA  
EXECUTIVE DIRECTOR  
CENTRE FOR  
TRADE AND INVESTMENT LAW

## TOPIC- CURRENT CRISIS AT THE WTO

Moderator: Pramiti Parvani

4th July (Saturday), 5:00 P.M. IST



National University of Juridical Sciences



@sitc.nujs

[nujssitc.wordpress.com](http://nujssitc.wordpress.com)

3. **The Centre for Competition Law successfully submitted the Final Report on Competition Assessment of the Highways Sector, in September, 2020.** This report was

prepared by the Centre for Competition Law of the West Bengal National University of Juridical Sciences, Kolkata, under the guidance and supervision of Dr. Tilottama Raychaudhuri, Director of CCL and Dr. Shouvik Kumar Guha, Associate Director of CCL. The assessment is divided into the following parts. In Part I, the legislative provisions are identified that seek to establish dominance of some players or state authorities and/or allow for abuse of such dominant position by the said players/authorities. These laws are tested on settled principles of constitutional law and the impact they create on the market from a competition perspective. In Parts II and III, we identify provisions in these laws which allow for, or authorise actions/agreements

which have appreciable adverse effects on competition. Part II looks at concession agreements and identifies clauses in the concession agreements which are likely to cause competition concerns, or distort the market and create inefficiencies in the market. In Part III, various provisions in primary documents pertaining to bidding procedures for projects are analysed and assessed to determine the possible competition concerns. The reason to cover concession agreements and bidding rules is because most of the provisions in the abovementioned Acts are enabling provisions, which authorise

or give power to act in a certain way. While this grant of authority/power may not, in and of itself, be anti-competitive, their manner of use and effect of use may have anti-competitive effects. Thus, it becomes necessary to check if the implementation of the laws under these Acts is problematic from the lens of competition or not.

4. **The Centre for Competition Law, through its student society, the SITC, organised a webinar on August 8, 2020, as part of the NUJS Online Lecture Series.** The webinar lecture was delivered by Mr K.P. Anand (Deputy Director of Law, Competition Commission of India) and moderated by Dr Tilottama Raychaudhuri, Associate Professor of Law, NUJS Kolkata. The topic for the webinar was “Latest developments and challenges u/s 3 of the Competition Act, 2002 (Prohibition of Anti-Competitive Agreements)”.

Mr. Anand first discussed the important milestones that led to the codification of the Competition Act, 2002 (Act). The first was the Monopolistic and Restrictive Trade Practice Act, 1969. The second was the liberalization of the economy in 1991. the administrators faced the challenge of creating a level playing field after the markets were opened to foreign corporations and to emerging private sector undertakings. This challenge



led to the appointment of the Raghavan Committee. The Report published by this Committee formed the basis of the Act, which was aimed at preventing antitrust practices by corporations. The Act expressly defined competition concepts and unfair trade practices, and provided for the regulation of competition, advocacy and the power to impose penalties. It also adopted the rule of reason approach. He also discussed the amendments that brought in 2007, 2009 and 2017.

Mr. Anand discussed the objectives of the Act and the structure of the Competition Commission of India (CCI). He elaborated on who could approach the CCI, and what the enforcement, advisory and advocacy functions of the CCI were and gave examples of the same. He discussed cartels and bid-rigging, and the hierarchy of the appellate process and the disposal of alleged contraventions of Sections 3 and 4 of the Act till March 31, 2019. He briefly touched upon Section 3 of the Act, the amendments to the section and the latest challenges faced by this section. He discussed horizontal and vertical agreements and the *per se* rule in detail. He also discussed remedies available under Section 27 and 28 of the Act. He highlighted the importance of Section 48 and individual liability with respect to cartels.







Mr. Anand then looked into important case laws on Anti-competitive agreements. He discussed the *Shri Shamser Kataria v. Honda Sael Cars India Ltd.* automobile case and the *Varca Druggist & Chemist v. Chemists and Druggist Association, Goa* pharmaceutical case. He also discussed the landmark *Cement Cartel* case. He discussed the leniency programme that is used for the detection of cartels, along with the 2017 amendment to these regulations.

Mr. Anand highlighted the challenges faced by the enforcers because of pricing algorithms and digital markets. Big data and pricing algorithms allow for personalised and dynamic pricing. Third-party pricing platforms pose a different challenge because some platforms set the price while some recommend the price. Algorithms and collusions further complicate these problems. Algorithms change structural characteristics like transparency and frequency of interaction, and therefore make markets more prone to collusion. They

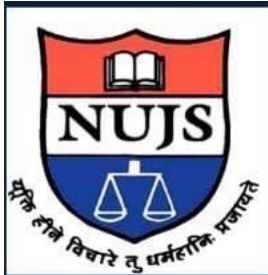
also replace explicit collusion with tacit co-ordination, by providing companies with automatic tools to implement a collusive agreement without direct communication. This results in the obscurity of liability of individuals or firms that benefit from the autonomous decisions of the algorithm and the extent to which humans can control the activities of the algorithms.

This raises several key questions to be answered by competition agencies – whether antitrust liability can be established when pricing decisions are made by a machine using an algorithm and not by human beings; whether humans intentionally create algorithms to harm consumers; and whether liability can be charged automatically, jointly and severally, on the designer of the algorithm, the individual who used it, and the individual who benefited from the decision made by the algorithm. Clear answers to these questions would arise only when more antitrust cases involving independent algorithmic activities are litigated in the courts of law. He also highlighted the need to rethink fundamental antitrust concepts given that algorithms make tacit collusion more frequent.

Mr. Anand discussed some alternative approaches to algorithmic collusion. He discussed market studies and market investigations, ex-ante merger control and other possible remedies. He discussed the 2019 report of the Competition Law Review Committee and the amendments to the Act recommended therein to the governing body, the appellate authority, the definitions of ‘cartels’, ‘consumer’ and ‘turnover’, hub and spoke cartels, and settlement and commitments. He also discussed the recommendations made to enable speedy resolution of cases. He concluded by highlighting the issues posed by digitization and how regulatory intervention would function.

	 Competition Commission of India	 SITC
NUJS ONLINE LECTURE SERIES IN COLLABORATION WITH SITC		
		
<p>K. P. ANAND DEPUTY DIRECTOR (LAW) COMPETITION COMMISSION OF INDIA</p>		
<p><b>TOPIC:</b> <b>LATEST DEVELOPMENTS/CHALLENGES U/S 3 OF THE COMPETITION ACT, 2002.</b></p>		
Moderator: Dr. Tilottama Raychaudhuri		
8th August (Saturday), 3:30-5:00 P.M. IST		
	National University of Juridical Sciences	nujssitc.wordpress.com
	@sitc.nujs	

5. **The Centre for Competition Law, through its student society, the SITC, organised a webinar on February 13, 2021 as part of the NUJS Online Lecture Series.** The webinar lecture was delivered by Ms. Shailja Singh (Associate Professor, Centre for WTO Studies, IIFT). and moderated by Jacob Abraham. The topic for the webinar was ‘The Safety Spin: National Security and WTO Law’. The panellist spoke on the Art. 21 of the GATT in light of the recent WTO dispute of Saudi Arabia- IPR. She analysed the rulings of the WTO dispute of Russia- Traffic in Transit. She further looked into the future challenges faced by Art. 21 of the GATT these included challenges posed by Secondary sanctions, COVID-19, Cybersecurity, FTAs etc.



SHAILJA SINGH  
LEGAL CONSULTANT  
CENTRE FOR WTO STUDIES  
INDIAN INSTITUTE OF FOREIGN TRADE

TOPIC:

## THE SAFETY SPIN: NATIONAL SECURITY AND WTO LAW

FEBRUARY 13, SATURDAY  
3:30 PM TO 5:30 PM  
ON  
SITC FACEBOOK PAGE

- 6.
7. The Centre for Competition Law successfully carried out translations of Competition Advocacy booklets on various topics such as Cartels, Bid Rigging, Abuse of Dominance. Regulation of Combinations, Leniency. FAQs etc. in Bengali language.



**A total of Nine Advocacy booklets were translated and updated, from May to June, 2021.**



Competition Act, 2002  
প্রতিযোগিতা আইন, 2002

BENGALI VERSION

## প্রতিযোগিতার প্রচার



সবার মঙ্গলের জন্য ন্যায্য প্রতিযোগিতা'



Fair Competition  
For Greater Good

भारतीय प्रतिस्पर्धा आयोग  
COMPETITION COMMISSION OF INDIA

8. **The Centre for Competition Law successfully hosted the 3<sup>rd</sup> edition of the CCI-NUJS National Moot Court Competition from 9<sup>th</sup> to 11<sup>th</sup> July, 2021.** The event, a

brain-child of the Competition Commission of India, was hosted by the Centre for Competition Law, through its student society, the NUJS Society for International Trade and Competition Law (SITC). The moot court competition aimed to foster learning and development in the field of competition law by exposing students to experienced practitioners and academicians in the field, create public awareness and impart training on competition issues. The Moot consisted of two stages – a Memorial Screening Round and Oral Rounds. 58 law colleges and universities from across the country participated in the Memorial Screening Rounds, out of which top 24 teams qualified for the Oral Rounds. The Moot Proposition was drafted by Mr. Pratik Dutta (Senior Research Fellow, Shardul Amarchand Mangaldas & Co.) and Mr. Rahul Rai (Of-counsel, AZB and Counsel at Chambers of Gopal Subramanian).



9. Dr. Tilottama Raychaudhuri, Director CCL, was appointed as Co-Chair of the Cartel Working Group, from 2020-2021. Under her supervision and the supervision of Dr. Shouvik Kumar Guha, Associate Director, CCL, **The Centre for Competition Law successfully submitted a research paper titled "TOWARDS A CRISIS CARTEL REGIME IN INDIA – A CASE FOR THE RECOGNITION OF CRISIS CARTELS" in July 2021.** This research paper, prepared by the Centre for Competition Law, NUJS, is

available on SSRN and can be accessed at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3881894](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3881894)

10. **The Centre for Competition Law, through its student society, the SITC, organised a One Day Virtual Seminar on Competition Law and Policy: Contemporary Challenges on March 26, 2022.** The One Day Seminar was inaugurated by our Hon'ble Vice Chancellor Sir, Prof. Dr. Nirmal Kanti Chakrabarti and moderated by Dr. Tilottama Raychaudhuri, Director of CCL and Dr. Shouvik Kumar Guha, Associate Director of CCL. The following were the sub-themes for the Seminar:

1. Big Data: Emerging Concerns under the Competition Law
2. Regulation of Digital Markets & Corporate Compliance under Competition Law
3. Contemporary Issues and Emerging concerns in Competition Law

A total of 16 papers were presented. The presenters included both students and faculty members from all over India and abroad. The sessions were Chaired by Pratik Dutta (Senior Research Fellow, Shardul Amarchand Mangaldas), Manas Kumar Chaudhuri (Partner, Khaitan and Company), Swayambhu Mukherjee (Assistant General Counsel, ITC) and Nidhi Singh (Advocate, Supreme Court of India).



# 1 DAY SEMINAR ON COMPETITION LAW AND POLICY: CONTEMPORARY CHALLENGES

26th March, 2022

Join us at 9 AM on 26th march 2022

<https://meet.google.com/kow-fevi-gpp>

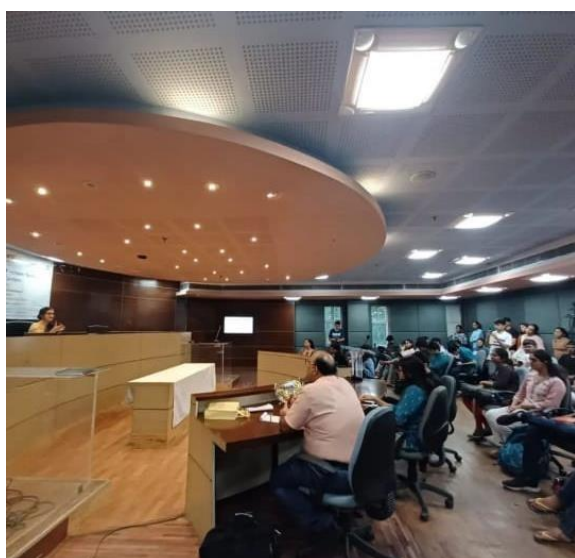
**Organised by Society of International Trade and Competition Law (SITC) and The Centre for Competition Law, NUJS**

11. The Centre for Competition Laws, in collaboration with the Society for International and Trade Law, organised the “CCI-NUJS Lecture Series - Inaugural Lecture” on



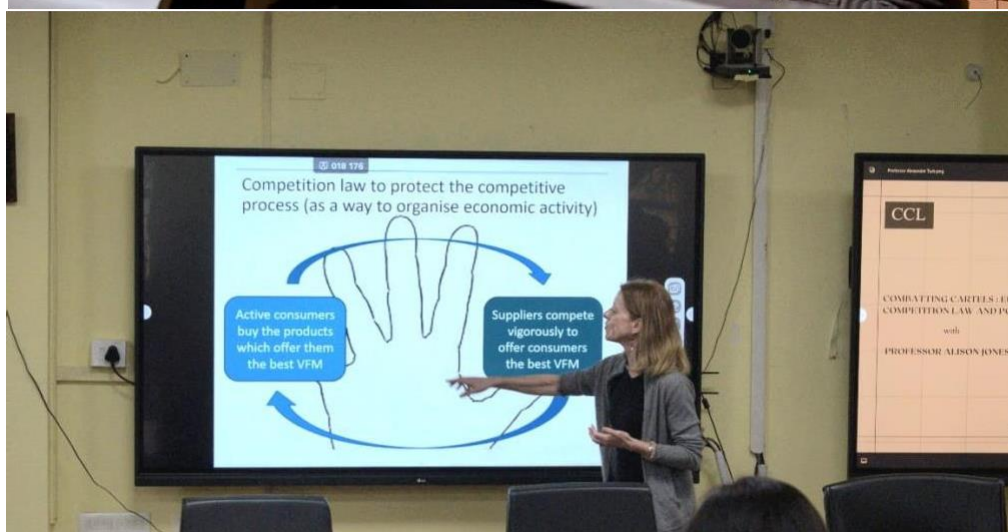
**27th September 2022.** The theme of the lecture was "**Contemporary Issues in Competition Law**". **Shri Ashok Kumar Gupta, Chairperson of the Competition Commission of India**, delivered the inaugural lecture of this Lecture Series. Professor V.K. Unni (Professor, IIM-Calcutta) spoke on relevant issues in competition law. Our Hon'ble Vice Chancellor Sir, Prof. Dr. Nirmal Kanti Chakrabarti delivered the welcome address. **The session took place between 3:30-5:00 PM in the MCS Hall.**

12. Dr. Tilottama Raychaudhuri, Director CCL, was appointed as Co-Chair of the Cartel Working Group, once again from 2021-2022. Under her supervision and the supervision of Dr. Shouvik Kumar Guha, Associate Director, CCL, **The Centre for Competition Law conducted research on "GRANT OF LENIENCY BY THE COMPETITION COMMISSION OF INDIA" from August 2021 till October, 2022.**
13. **The Centre for Competition Law successfully completed a research project "GRANT OF LENIENCY BY THE COMPETITION COMMISSION OF INDIA - A REVIEW OF EXISTING CASES TO EXAMINE JUDICIAL TRENDS AND EFFICACY OF THE LENIENCY REGIME IN INDIAN COMPETITION LAW"** and submitted the same on August 2022, as part of a minor research grant given to the Centre by the University.
14. The Centre for Competition Laws, in collaboration with the Society for International and Trade Law [SITC] organised the CCI-NUJS Lecture Series – 4<sup>th</sup> Lecture by Ms. Sayanti Chakrabarti (Director, Competition Commission of India) on the topic "***Regulation of Competition in Digital Markets***" on **1<sup>st</sup> September, 2023.**



15. The Centre for Competition Laws, in collaboration with the Society for International and Trade Law [SITC] organised a Seminar Lecture by Professor Alison Jones (Professor, Kings College, London) on the topic “*Combating Cartels: EU Competition Law and Policy*” on 21<sup>st</sup> February, 2024.

The session began with Professor Jones describing the necessity of studying competition laws in general. She then described the instance of companies coming together to control supply, thus forming ‘cartels’. She also gave the attendees an example of US cartels along with an illustrative video on the same. After discussing the provisions for cartel detection and leniency programs among cartels, she ended the lecture. The event then moved on to a Q&A session, with the attendees asking questions based on their understanding of the lecture.



16. The Centre for Competition Laws, in collaboration with the Society for International and Trade Law [SITC] organised a Seminar Lecture by Professor Alexander Turk, (Professor, Kings College, London) on the topic ***“Institutional Architecture of EU Financial Regulation”*** on 21<sup>st</sup> February, 2024.

The session began with Professor Turk describing the general characteristics of the European Union and its legal system where within particular focus granted on the decentralized application of Union Law. He then delved into the aspects of financial regulation vis-à-vis Union Law dividing it into three facets: Legislation, Administrative Rules and Soft Law. Professor Turk discussed each facet, spending considerable time on each part to ensure that every attendee understood clearly and possessed clarity regarding the subject. The event then moved on to a Q&A session, with the attendees asking questions based on their understanding of the lecture.



17. The Centre for Competition Laws, in collaboration with the Society for International and Trade Law [SITC] Organised a Seminar Lecture by Dr. T.S. Somashekar (Professor of Economics, NLISU, Bangalore) on the topic ***“Relevant Market Definition and Digital Platforms in Competition Law”*** 1<sup>st</sup> March, 2024. The lecture saw enthusiastic participation from students, who posed various queries to Prof. Somashekar regarding determination of market on Digital Platforms. The session was insightful with Prof. Somashekar explaining the relevant concepts with examples and case laws.





**18. The Centre for Competition Laws, in collaboration with the Society for International and Trade Law [SITC] organised the 1st Fox & Mandal - NUJS National Article Writing Competition.**

The first edition of the competition saw entries from over 350 students across India, with students writing on topics such as the African Continental Free Trade Area, Digital Competition Act and Competition Law & Sustainability. The papers were evaluated by faculty, NUJS and the winners were awarded with cash prizes as well as internship opportunities with Fox & Mandal, Advocates and Solicitors.

### Results of the 1st Fox & Mandal - NUJS National Article Writing Competition

Organised by - The Society for International Trade and Competition Law, NUJS and the Centre for Competition Laws, NUJS in collaboration with Fox & Mandal, Advocates and Solicitors

<b>1<sup>st</sup></b>	Ms. Divyanshi John Hidayatullah National Law University
<b>2<sup>nd</sup></b>	Mr. Shrey Shalin Chanakya National Law University
<b>3<sup>rd</sup></b>	Ms. Komal Gupta & Ms. Deewanshi Agrawal UPES, Dehradun

We are incredibly grateful to Fox & Mandal, Advocates and Solicitors for their support in organising this competition and providing internship opportunities to the authors of the top 2 articles.

### 1st Fox & Mandal - NUJS National Article Writing Competition

Organised by - The Society for International Trade and Competition Law, NUJS and the Centre for Competition Laws, NUJS in collaboration with Fox & Mandal, Advocates and Solicitors

Contact us:  
 +91 744 732 8941 (Sumanth Joshi)  
 +91 629 458 5134 (Bansundhara Das)

sitcnujs  
 sitc@nujs.edu





**Phone**

(+91) 025694700

**Mail**

registrare@nujs.edu

**Website**

<http://www.nujs.edu/>

**Address**

The West Bengal National University of Juridical Sciences  
"Dr. Ambedkar Bhavan" 12, Lb Block, Sector III, Salt Lake City,  
Kolkata - 700 106