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GUN-JUMPING IN INDIA: WHEN DOES M&A PLANNING BECOME A COMPETITION LAW VIOLATION?

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Abstract

Mergers and acquisitions (M&A) in India are not simply private matters between two companies once a deal crosses certain size thresholds, it becomes a matter of public interest, and the Competition Commission of India (CCI) must review it before the transaction is allowed to take effect. This process exists so that a merger cannot quietly reshape a market through higher prices, fewer choices for consumers, or the side lining of smaller competitors before anyone in authority gets the chance to examine it. Problems arise when companies, often eager to move quickly once a deal is agreed, begin acting as though the merger has already happened before this approval comes through. This might mean sharing sensitive pricing or customer information, coordinating business decisions, transferring management control, or in the most direct cases, simply closing the deal early. This premature behaviour is known as "gun-jumping," and Indian law treats it as a serious compliance failure rather than a minor technicality. This paper sets out, in plain language, what gun-jumping means under Indian competition law, why the rule exists, the two different ways it can occur, how the CCI has identified and punished it in real cases, and how the Competition (Amendment) Act, 2023 has reshaped the landscape by introducing new thresholds and clarifying long-standing grey areas. The aim is to make the subject accessible even to readers without a legal or corporate background.

INTRODUCTION

Imagine two companies signing a merger agreement. Even though the paperwork is signed, the deal is not truly "done" until regulators confirm that it will not harm competition in the market. In India, this regulator is the Competition Commission of India (CCI). The law expects the two companies to stay independent and keep competing with each other until the CCI gives its approval.¹ If the companies start behaving as if the merger has already happened for example, by sharing pricing strategies, combining sales teams, or transferring control of the business before the CCI clears the deal, this is called "jumping the gun." It is treated as a serious violation because it can quietly reduce competition in the market without the regulator ever getting a chance to review it. This paper looks at the legal basis for gun-jumping rules in India, explains the difference between its two forms, discusses landmark cases, and explores how recent legal reforms are changing the way companies must plan their deals.²

WHAT IS GUN-JUMPING?

Gun-jumping is not a term that is formally defined anywhere in the Competition Act, 2002. Instead, it is understood through Section 6(2) and Section 6(2A) of the Act, which together create what is known as a "standstill obligation."³ Under Section 6(2), any company entering into a transaction that crosses defined asset or turnover thresholds must notify the CCI before completing the deal. Section 6(2A) then says that the transaction cannot take effect until the CCI approves it or a set waiting period passes.⁴

If your deal is big enough, you must ask the CCI first, and you must wait for a yes before actually going ahead. The CCI itself has explained gun-jumping as any action connected to a

¹ Thomson Reuters, *Merger Agreement—Legal Glossary* (Sept. 6, 2024) <https://legal.thomsonreuters.com/blog/merger-agreement/>

² U.S. Law Explained, *Gun Jumping*, <https://uslawexplained.com/gun-jumping> (last visited Sept. 19, 2026).

³ Praveen Raju & Janhavi Joshi, *Gun Jumping Under the Merger Control Regime*, Mondaq (Sept. 15, 2022), <https://www.mondaq.com/india/corporate-and-company-law/1230292/gun-jumping-under-the-merger-control-regime>

⁴ Avantika Tiwari, *Gun Jumping in Indian Competition Law – The Need to Redefine Contours*, Arbitration & Corporate Law Review (Apr. 30, 2023), <https://www.arbitrationcorporatelawreview.com/post/gun-jumping-in-indian-competition-law-the-need-to-redefine-contours>

proposed merger that has the effect of putting the merger, or a part of it, into practice without the CCI's approval, whether that approval is given openly or is only implied.⁵

GUN-JUMPING GENERALLY COMES IN TWO FORMS:

Procedural gun-jumping happens when a company simply fails to notify the CCI at all, or notifies it too late for instance, after the deal has already closed. This is essentially a failure to give the CCI the required notice within the time period fixed under Section 6(2), or giving notice only after the deal is already done.

Substantive gun-jumping happens when the notice may have been filed correctly, but the parties still start behaving like a single business before receiving approval. This could include combining operations, sharing confidential business information, changing product pricing together, or transferring management control early. In law, gun-jumping occurs either when a company fails to notify the transaction before completing it, or when it violates the standstill obligation by giving effect to the deal before the CCI's approval.

THE LEGAL BACKBONE: SECTION 43A

The power to punish gun-jumping comes from Section 43A of the Competition Act. This section was added to the Act through a 2007 amendment specifically to give the CCI the power to penalise parties who fail to notify their deals as required under Section 6(2).

An important legal point about Section 43A is that it does not require proof that the company intended to break the law.⁶ In 2018, the Supreme Court of India clarified that having a guilty intention, known in law as "mens rea," is not necessary to attract a Section 43A penalty that requirement only applies to criminal or quasi-criminal cases. The reasoning is that a Section 43A penalty is for breaking a civil obligation, not a criminal one, so the proceedings are neither

⁵ Saswata Roy & Debdatta Mukhopadhyay, *Gun Jumping Under the Indian Competition Law: An Analysis with Global Jurisdictions*, 4 Int'l J.L. Sci. & Innovation 362, 362–72 (2022), <https://ijlsi.com/wp-content/uploads/Gun-Jumping-under-the-Indian-Competition-Law.pdf>

⁶ G R Bhatia & Toshika Soni, *Evolving Gun Jumping Jurisprudence in India*, Mondaq (Sept. 29, 2023), <https://www.mondaq.com/india/antitrust-eu-competition/1371588/evolving-gun-jumping-jurisprudence-in-india>

criminal nor quasi-criminal in nature. This means a company can be penalised for gun-jumping even if it made an honest mistake or acted carelessly rather than deliberately.⁷

As for the size of the penalty, the law allows a penalty of up to 1% of the total turnover or assets of the combining companies, whichever figure is higher. This is a very large ceiling in theory, since even 1% of a big company's turnover can run into hundreds of crores of rupees. In practice, however, the CCI has usually been cautious, and actual fines have often ranged from around INR 5 lakh to INR 1 crore per case, well below the theoretical maximum.

WHY THE STANDSTILL RULE EXISTS

The idea behind the standstill obligation is straightforward: regulators need to review a deal before it happens, not after. If two competing companies are allowed to merge their operations informally while the CCI is still reviewing the case, the review becomes pointless. Any damage to competition such as higher prices, reduced choices for consumers, or the sidelining of smaller rivals may have already taken place. The main purpose of the standstill obligation is to make sure that until the CCI has assessed and approved a transaction, the parties continue to run their businesses independently of one another. If the two companies happen to be competitors, this rule also stops any softening of the competition between them while the case is pending. When checking whether a company has jumped the gun, the CCI typically asks whether the parties have stopped competing the way they did before, or whether they have stopped acting independently of each other.⁸

HOW GUN-JUMPING SHOWS UP IN REAL DEALS

Gun-jumping does not always look dramatic. It can show up in subtle ways written into deal documents, such as:

⁷ Ravikant Bhardwaj, *Working Paper on Business Implications of Gun Jumping in Combination Regulations*, IICA School of Competition Law & Market Regulation Working Paper Series No. 02/2015 (2015), <https://iica.nic.in/images/Working%20Paper%20on%20Business%20Implications%20of%20Gun%20Jumping%20in%20Combination%20Regulations.pdf>

⁸ Ajit Singh Parihar, *Merger Control and Standstill Obligations in Digital Markets: A Comparative Competition Law Perspective (India-EU-United States)* (Dec. 30, 2025), <https://doi.org/10.2139/ssrn.6054036>

- **Interim covenants:** Clauses in the agreement that require the target company to get the buyer's approval before making normal business decisions, even before the deal has closed.
- **Information sharing:** Exchanging commercially sensitive data, like pricing plans or customer lists, ahead of approval.
- **Anteriority clauses:** Clauses that make the seller responsible for business outcomes from an earlier date than when the buyer actually takes charge. In the case involving Bharti Airtel's proposed purchase of Tata Teleservices' consumer mobile business, the CCI found that such a clause, which predated the point at which the buyer took on economic responsibility, could lead to a kind of quiet cooperation between the parties, leaving the target with little reason to keep competing and treated this as a form of gun-jumping.⁹
- **Open-market share purchases:** Buying shares of the target company on the stock exchange before getting clearance. Recent trends show that this kind of open-market purchase has been one of the most common triggers for gun-jumping penalties.

LANDMARK CASES THAT SHAPED THE LAW

SCM Soilfert case: In this case, the erstwhile Competition Appellate Tribunal upheld a penalty against the company for gun-jumping, reinforcing that the requirement to notify the CCI in advance under Section 6(2) is meant to be strictly enforced before the deal happens, not afterward.

Bharti Airtel/Tata case: As mentioned above, this case is important because it widened the understanding of gun-jumping beyond just "closing the deal early." It showed that even contractual clauses that indirectly limit a target's independence can count as gun-jumping.

Amazon–Future Group case: This is perhaps the most well-known gun-jumping-adjacent case in India in recent years. The CCI both withdrew its earlier approval of Amazon's investment in Future Group and imposed a penalty of Rs 202 crore on Amazon for suppressing material facts while seeking approval in 2019. While this case is more closely tied to Section 44 (false or misleading information) than pure gun-jumping under Section 43A, it is often discussed alongside gun-jumping cases because it shows how seriously the CCI now treats attempts to

⁹ LexisNexis, *Interim Covenants*, Practical Guidance, <https://advance.lexis.com/open/document/openwebdocview/Interim-Covenants>

bypass honest scrutiny of a deal. Commentators have noted that this case reflects a major shift in the regulator's approach, marking gun-jumping-related conduct as a serious offence rather than a minor technical lapse.

UPL Sustainable Agri Solutions case (2023): Here, the CCI penalised Platinum Trust and TPG Upswing under both Section 43A and Section 44 after finding overlaps between the activities of an indirect subsidiary and the target company that had not been properly disclosed. Separately, the CCI also imposed a penalty of INR 50 lakh under Section 44 for making false statements about there being no such overlaps in the parties' Green Channel filing. This case is notable because it shows how the "Green Channel" a fast-track approval route meant for deals with no competition overlap can itself become a source of gun-jumping penalties if companies misuse it.

THE 2023 AMENDMENT: A TURNING POINT

The Competition (Amendment) Act, 2023 introduced some of the most significant changes to India's merger control rules in over a decade. Several of these changes directly affect how gun-jumping risk is assessed.

Deal Value Threshold (DVT): Transactions worth more than INR 2,000 crore, where the target company has "substantial business operations" in India, will now require prior CCI approval, even if the deal does not cross the older asset or turnover thresholds. This change was mainly driven by the CCI's earlier inability to review deals in digital and infrastructure sectors, where target companies often had huge potential value but very low assets or turnover on paper. This closes a gap that let large tech and start-up acquisitions slip past regulatory review simply because the target's balance sheet looked small.¹⁰

Relief for open offers and stock-market purchases: The amendment also allows companies to go ahead with open offers and share purchases made through a recognised stock exchange without being treated as gun-jumping, though certain conditions must still be met. This is a

¹⁰ Naina Bhardwaj, *Merger Control Regime in India: Analyzing the 2023 Revisions to the Competition Law*, India Briefing (July 10, 2023), <https://www.india-briefing.com/news/merger-control-regime-in-india-analyzing-the-2023-revisions-to-the-competition-law-28830.html/>

practical fix, since securities law often requires such purchases to be completed quickly, which used to clash with the standstill rule under competition law.¹¹

Faster review timelines: The time within which the CCI must form its initial opinion on a combination has been shortened, moving from 30 working days to a flat 30 days.

Wider definition of "control": The amendment has broadened the definition of "control" to also include "material influence," a lower standard than the earlier tests. This is important for gun-jumping analysis because it means even deals that give a buyer meaningful influence over a target without full ownership or a majority stake could now trigger the notification requirement, and hence the standstill rule.

How these apply to ongoing deals: The new deal value threshold applies to transactions where deal documents were signed but the transaction had not yet closed before 10 September 2024. Additionally, multi-step deals will not automatically be treated as gun-jumping just because some intermediate steps have already closed, as long as the remaining steps that trigger the deal value threshold are still notified and approved.¹²

WHY THIS MATTERS FOR COMPANIES PLANNING A DEAL

For businesses planning a merger or acquisition in India, gun-jumping risk needs to be managed carefully from the very first stage of deal planning, not just at the signing stage. Some practical takeaways include:

1. **Assess thresholds early:** With the new deal value threshold, even deals that look small on paper (based on assets or turnover) might now require CCI approval if the overall deal value crosses INR 2,000 crore.

¹¹ Avaantika Kakkar & Kirthi Srinivas, *2023 Amendments to Indian Competition Law: Implications for M&A (Part 1)*, Kluwer Competition Law Blog (Apr. 18, 2023), <https://legalblogs.wolterskluwer.com/competition-blog/2023-amendments-to-indian-competition-law-implications-for-ma-part-1/>

¹² Global Law Experts, *India's Competition Law Amendments 2026: What M&A Counsel and Compliance Teams Must Know*, Global Law Experts (2026), <https://globallawexperts.com/competition-law-amendments-india/>

2. ***Be careful with interim arrangements:*** Any clause that limits the target's ability to run its business independently before approval such as requiring buyer sign-off on routine decisions — can be flagged as gun-jumping, even if unintentional.¹³
3. ***Limit information sharing:*** Companies should use "clean teams" and information barriers so that only non-sensitive, deal-necessary information is exchanged before approval.
4. ***Understand the exemptions:*** The new relief for open offers and stock-exchange purchases is helpful, but it comes with conditions, so companies must check that their specific deal structure actually qualifies.
5. ***No excuse of good intentions:*** Since intent does not matter for Section 43A penalties, "we didn't mean to break the rules" is not a valid defence. Careful legal review is essential even for deals that seem straightforward.¹⁴

CONCLUSION

Gun-jumping occupies an unusual space in Indian competition law: it is rarely about whether a merger is actually good or bad for the market, and almost entirely about whether the correct process was respected before the merger took effect. This distinction matters because it means a company can be penalised for gun-jumping even when its underlying deal poses no real threat to competition at all the violation lies in the premature conduct, not the outcome. As India's economy has grown and deal-making has become more frequent, larger, and increasingly concentrated in digital and technology-driven sectors, the CCI has made it clear that it intends to enforce the standstill obligation strictly, and that it will do so even without needing to prove that a company acted with bad intent. Cases such as Bharti Airtel/Tata and the UPL Sustainable Agri Solutions matter show that gun-jumping risk is not confined to obviously reckless behaviour like closing a deal outright it can hide inside routine contractual language, disclosure filings, or fast-track approval routes that companies assume are low-risk. The 2023 amendments add another layer of complexity: the new deal value threshold means that even transactions with modest assets or turnover can now trigger mandatory notification, while the broadened definition of "control" to include "material influence" sweeps in deals that

¹³ Global Law Experts, *India's Competition Law Amendments 2026: What M&A Counsel and Compliance Teams Must Know*, Global Law Experts (2026), <https://globallawexperts.com/competition-law-amendments-india>

¹⁴ Mellissa Campbell Duru et al., *SEC Staff Issues Exemptive Relief Allowing 10-Business Day Equity Tender Offers*, Securities Regulation & Corporate Governance Monitor (Apr. 20, 2026), <https://themonitor.gibsondunn.com/sec-staff-issues-exemptive-relief-allowing-10-business-day-equity-tender-offers/>

previously might have escaped scrutiny altogether. Taken together, these developments signal that gun-jumping compliance can no longer be treated as a late-stage formality handled only once a deal is signed. Instead, it needs to be built into deal planning from the earliest stages in how information is shared, how interim covenants are drafted, and how thresholds are calculated so that companies do not inadvertently cross a line the law takes very seriously.