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GUN-JUMPING IN INDIA: NAVIGATING THE BOUNDARY BETWEEN PRE-CLOSING CONDUCT AND PREMATURE INTEGRATION

~TATHAGAT MEHTA

ABSTRACT

Gun-jumping has become an important concern in Indian merger-control regulation. It arises when parties to a proposed combination implement the transaction, wholly or partly, before receiving the required approval from the Competition Commission of India (“CCI”). Although the standstill obligation under the Competition Act, 2002 is intended to preserve competition during the review period, its practical application is not always clear. M&A transactions commonly involve due diligence, information-sharing, pre-closing covenants and integration planning. These activities are necessary for completing a transaction, but they may also reduce the parties’ commercial independence.

This paper examines the boundary between legitimate pre-closing conduct and prohibited gun-jumping in India. It analyses the statutory framework governing combinations, the standstill obligation under Section 6(2A) of the Competition Act, 2002, the Competition Commission of India (Combinations) Regulations, 2024, and relevant CCI decisions and guidance. It also considers the risks arising from premature transfer of control, exchange of commercially sensitive information and excessive pre-closing rights.

The paper argues that India’s existing framework provides an essential basis for preventing premature implementation, but greater regulatory clarity is still required. A risk-based approach should distinguish between permissible transaction preparation, conduct requiring safeguards and activities that effectively implement the transaction before approval. Clean teams, restricted information-sharing, narrowly drafted covenants and documented compliance procedures can help manage these risks. The paper concludes that stronger guidance, rather than weaker enforcement, is necessary to balance effective competition protection with legitimate M&A activity.

1. INTRODUCTION

1.1. BACKGROUND

Mergers and acquisition (“M&A”) forms central part to corporate restructuring and expansion, but the transactions that are capable of materially altering the competitive conditions falls to scrutiny under India’s merger-control regime. The Competition Act, 2002 treats the specified mergers, acquisitions and amalgamations as “combinations” under the ambit of Section 5 of the Act if the statutory requirements are satisfied, and then empowers the Competition Commission of India (“CCI”) to examine whether such transactions may likely cause a situation of Appreciable Adverse Effect on Competition (“AAEC”) in the market. India’s merger-control framework is thus designed in a way to regulate and intervene transactions much before a potentially harmful combination is consummated.¹

1.2. STANDSTILL OBLIGATION

One of the defining features of this framework is its suspensory nature. Section 6 of The Competition Act, 2002 restricts the parties from giving effect to any notifiable combination, wholly or partly, until the Competition Commission of India is satisfied of the statutory conditions. This standstill obligation aims to preserve the competitive conditions that exists prior to such transaction by requiring respective parties to the transaction to act independently while the CCI conducts its review in the due course.² This principle is particularly important because if the transaction is implemented in it’s premature stage, then this may alter the competitive structure of the market much before the CCI has determined whether the transaction should be approved, modified or prohibited. As a result, the efficacy of a merger control not only depends on CCI’S substantive assessment of a transaction, but also depends upon preventing any premature implementation.

1.3. GUN-JUMPING

A conduct that violates this standstill obligation is commonly referred as “Gun-Jumping.” The concept included situations in which the parties entering into any combination act on the said transaction, wholly or partly, much before obtaining the requisite approval from the CCI. The Indian scholars have identified gun-jumping as an important component for development of India’s merger-control jurisprudence, with CCI’s intervention of addressing issues like premature implementation, acquisition of control, interconnected transactions and imposing penalties.³ The CCI’s current guidelines also recognise that a situation of gun-

¹ The Competition Act, 2002, No. 12 of 2003, Sections 5, India Code (2003)

² The Competition Act, 2002, No. 12 of 2003, Sections 6 and 6(2A), India Code (2003)

³ Sachin Goyal & Konark Bhandari, Gun Jumping in India: Lessons from Competition Commission of India's Enforcement Activities, 5 J. Antitrust Enforcement 216 (2017).

jumping may arise when the parties to the transaction may cease to act independently or undertake such conduct that may reduce their degree of independence before the transaction has been approved.⁴

1.4. CHALLENGES

The underlying challenge however lies in distinguishing between the prohibited implementation and the legitimate pre-closing conduct. A transaction under M&A regularly requires parties to conduct due diligence, exchange of information, prepare regulatory filings, management involvement and much more formalities for closing the deal. At the same time, sharing information, contractual restrictions, management involvement or integration pf arrangements may reduce the independence of parties to the transaction and may potentially amount to premature implementation. The CCI therefore advises the parties to exercise caution in sharing of commercially sensitive information and has recognised the use of structured “Clean Teams” as a safeguard in due diligence and transition planning.⁵

1.5. METHODOLOGY

The aforementioned tension creates an important legal and transactional question: “where should the boundary be drawn between the legitimate preparation and prohibited premature integration in an M&A deal?” This question has acquired greater significance following the substantial changes to India’s merger-control framework that was introduced through Competition (Amendment) Act, 2023 and the Competition Commission of India (Combinations) Regulations, 2024.⁶ In view of this, the paper examines whether India’s current legal framework provides a sufficient, clear and predictable standards for creating distinction between the permissible pre-closing conduct and gun-jumping. It adopts a doctrinal and analytical methodology examining statutory provisions, regulations, academic literature and CCI’s decisional practice and then evaluates whether a greater regulatory clarity is required in order to reconcile effective competition enforcement with the practical requirements of M&A transactions.

2. LEGAL FRAMEWORK GOVERNING GUN-JUMPING IN INDIA

2.1. THE CCI’S MERGER CONTROL FRAMEWORK

⁴ Competition Commission of India, *Frequently Asked Questions & Answers Relating to Combinations*, Q. 147 (2025).

⁵ Competition Commission of India, *Frequently Asked Questions & Answers Relating to Combinations*, Qs. 151–165 (2025).

⁶ Competition (Amendment) Act, 2023, No. 9 of 2023 (India); Competition Commission of India (Combinations) Regulations, 2024 (India).

India's merger-control regime is primarily governed by the Competition Act, 2002. Section 5 of the Act defines a combination that includes specified acquisitions, mergers and amalgamations which satisfies the prescribed statutory conditions. The traditional framework was largely based on the assets and turnover of the relevant enterprises however, the Competition (Amendment) Act, 2023 introduced a deal value threshold, thereby expanding the potential scope of merger control to a certain high-value transactions involving businesses with relatively limited assets or turnover in India.⁷

Section 6 of the Act provides the principal mechanism for regulating combinations. Section 6(1) prohibits a combination that causes or is likely to cause an appreciable adverse effect on competition ("AAEC") in India. Section 6(2) requires that the parties to a notifiable combination have to give notice to the Competition Commission of India ("CCI") in the prescribed manner. This provision reflects the preventive character of Indian merger control. The CCI is expected to examine the likelihood of the competitive consequences of a transaction before the transaction is executed.⁸

The statutory framework is supported by the Competition Commission of India (Combinations) Regulations, 2024. These regulations provide the procedure for filing of the combination notice and identifying the information and documents which the notifying parties must provide. They also need to address any interconnected transactions, exemptions, filing requirements and the treatment of different forms of acquisitions.⁹ These regulations are therefore important not only for determining whether a transaction requires any notification but also for understanding the procedural obligations that may arise once the parties decide to proceed with a notifiable transaction.

The CCI's role is consequently not just limited to reviewing completed mergers but it also seeks to preserve the competitive conditions during the period preceding consummation. This is important because a transaction may affect competition even before the legal title is transferred. For example, an acquirer may begin influencing the target company's commercial decisions, receiving sensitive business information or coordinating market conduct. These activities may compromise the independence of the parties before the CCI has completed its assessment. Thus, the standstill obligation addresses this risk.

2.2. STANDSTILL OBLIGATION AND REGULATION OF PRE-CLOSING CONDUCT

⁷ The Competition Act, 2002, No. 12 of 2003, Section 5 (India); Competition (Amendment) Act, 2023, No. 9 of 2023 (India).

⁸ The Competition Act, 2002, No. 12 of 2003, Sections 6(1) and 6(2) (India).

⁹ Competition Commission of India (Combinations) Regulations, 2024 (India).

India's merger-control regime is generally mandatory and suspensory in nature. Section 6(2A) of the Competition Act provides that a combination must not be given effect, wholly or partly, before the CCI passes an order under Section 31 or the applicable statutory period expires, whichever occurs earlier. The prohibition is therefore wider than a simple ban on completing the final share transfer. It also covers conduct that may amount to the partial implementation of a transaction.¹⁰

The standstill obligation therefore serves a clear purpose. It preserves the independence of the parties while the CCI examines the proposed combination. In its guidance material, the CCI explains that the parties should continue competing and carrying on their ordinary-course activities independently during the review period. Otherwise, the transaction may alter competitive conditions in a way that cannot be fully reversed, even if the CCI later prohibits the combination or approves it subject to some modifications.¹¹

Gun-jumping is commonly used to describe conduct that violates this obligation. The CCI characterises gun-jumping as acting before the appropriate time, including the complete or partial consummation of a combination before the required approval.¹² Academic commentary suggests that gun-jumping may arise in different forms. It may involve the failure to notify a legally notifiable transaction, or it may involve implementing a notified transaction before the statutory waiting period has been expired.¹³ The second category is particularly relevant to the period between signing and closing date.

The standstill obligation does not prohibit every form of cooperation after signing. M&A transactions require due diligence, regulatory preparation, financing arrangements and discussions concerning future integration. These activities are often commercially necessary and important. The difficulty arises when they move beyond preparation and begin to reduce the parties' independence in decision-making. The CCI has warned that actions taken in furtherance of a transaction, including the exchange of commercially sensitive information, may create gun-jumping concerns.¹⁴

The exchange of information is especially sensitive. Information concerning about current or future prices, customers, output, costs, marketing strategy and business plans may influence competitive behaviour. The CCI therefore recommends the use

¹⁰ The Competition Act, 2002, No. 12 of 2003, Section 6(2A) (India)

¹¹ Competition Comm'n of India, Frequently Asked Questions & Answers Relating to Combinations, Q. 142, What Is the Purpose and Objective of Standstill Obligations? (2025); Bharti Airtel Ltd., Combination Registration No. C-2017/10/531, Competition Comm'n of India, Order (Aug. 27, 2018).

¹² Competition Commission of India, Frequently Asked Questions & Answers Relating to Combinations, Q. 147, What Is Gun Jumping? (2025).

¹³ Sachin Goyal & Konark Bhandari, Gun Jumping in India: Lessons from Competition Commission of India's Enforcement Activities, 5 J. Antitrust Enforcement 216, 216–18 (2017).

¹⁴ Competition Commission of India, Frequently Asked Questions & Answers Relating to Combinations, Questions on Precautions to Be Taken After Notification and Before Approval (2025).

of clean teams when commercially sensitive information is being shared. Such teams should be appropriately limited and should generally exclude employees responsible for pricing, sales, marketing or other operational functions.¹⁵ The objective is simple: information necessary for evaluating or preparing the transaction should not become a means of coordinating the parties' conduct before approval is granted.

2.3. SIGNING, CLOSING AND WAITING PERIOD

The distinction between signing and closing is central to the analysis of gun-jumping. Signing occurs when the parties execute the transaction agreement and become contractually committed to the proposed deal. Closing occurs when the transaction is implemented, usually through the transfer of shares, assets, voting rights, control or consideration. Signing does not automatically mean that the combination has been consummated. However, the conduct after signing may still breach the standstill obligation if it effectively implements the transaction before the clearance.

The period between signing and closing is often commercially demanding. Parties may need to satisfy conditions precedent, obtain regulatory approvals, arrange financing, preserve the target's value and prepare for integration. Such steps are not inherently unlawful. They become problematic only when the proposed acquirer begins exercising rights that should arise only after closing. For example, extensive veto rights or contractual powers over pricing, sales, production, recruitment or other ordinary-course decisions may raise concerns if they give the acquirer practical influence over the target before the approval.¹⁶

The legal inquiry is therefore not limited to whether ownership has formally been changed. It also concerns whether the parties have begun to behave as though the transaction has already taken effect. As Goyal and Bhandari observe, the assessment of gun-jumping requires attention to the substance and economic effect of the parties' conduct, rather than merely to the formal structure of the transaction.¹⁷

The waiting period thus consequently performs both procedural and substantive functions. It gives the CCI time to evaluate the transaction and, at the same time, preserves the competitive conditions existing before the proposed combination. A failure to comply with the standstill obligation may expose the parties to penalties under Section 43A of the Competition Act.¹⁸ Parties to the transaction must therefore carefully prepare for closing. The central distinction is between legitimate

¹⁵ Competition Commission of India, Frequently Asked Questions & Answers Relating to Combinations, Questions on Precautions to Be Taken After Notification and Before Approval.

¹⁶ Goyal & Bhandari, *supra* note 7, at 218–25.

¹⁷ Goyal & Bhandari, *supra* note 7, at 218–25.

¹⁸ The Competition Act, 2002, No. 12 of 2003, Sections 6(2A), 43A (India).

preparation for a future transaction and premature implementation of that transaction.

3. GUN-JUMPING IN PRACTICE: FORMS AND REGULATORY CONCERNS

3.1. PREMATURE TRANSFER OF CONTROL

Gun-jumping may occur where the acquirer obtains control over the target, wholly or partly, before the CCI has approved the proposed combination. The concern is not limited to the formal transfer of the shares or legal ownership. It may also arise where the acquirer begins to influence the target's management, commercial strategy or ordinary-course decisions. In this context, control is assessed substantively, not merely by examining the transaction documents.¹⁹

The CCI has recognised that the control may arise through different means, including shareholding, board representation, special rights, financial arrangements, structural arrangements, expertise or the ability to influence the affairs and management of an enterprise.²⁰ This makes the issue particularly relevant in the transactions involving joint ventures, minority investments and shareholder agreements. A buyer may not possess a majority shareholding, yet still exercise meaningful influence over the target.

The risk becomes sharper when the contractual rights are exercised before closing. For example, the acquirer may insist on approving budgets, appointing senior personnel, determining business strategy or controlling significant commercial decisions. Some restrictions may be necessary to preserve the value of the target. But there is a limit. If the acquirer begins directing the target's business, the arrangement may resemble to an early transfer of control.

The CCI's decision in Bharti Airtel Ltd. illustrates this concern. The Commission examined arrangements that could affect the target's incentives and independence before the transaction was completed. The focus was on whether the parties had ceased to act independently during the review period.²¹ The lesson is practical. Parties should not assume that the absence of a formal closing will automatically protect them from gun-jumping scrutiny.

3.2. EXCHANGE OF COMPETITIVELY SENSITIVE INFORMATION

¹⁹ The Competition Act, 2002, No. 12 of 2003, Section 5, Explanation (a) (India).

²⁰ Competition Commission of India, Frequently Asked Questions & Answers Relating to Combinations, Question on the Meaning of "Control" for Purposes of the Act (2025).

²¹ Bharti Airtel Ltd., Combination Registration No. C-2017/10/531, Competition Comm'n of India, Order (Aug. 27, 2018).

Information exchange is another major source of risk. Due diligence is a normal part of a M&A deal. Buyers need information about the target's finances, customers, contracts, operations and future prospects. Yet the information shared may also include some commercially sensitive material. This creates a difficult boundary.

Information relating to the current or future prices, pricing policies, costs, margins, customers, output, sales strategy, marketing plans, product launches and business expansion can influence competitive behaviour. If the parties are actual or potential competitors, then exchange of such information may reduce uncertainty in the market. It may also encourage coordination before the transaction has been approved.²²

The CCI has expressly warned that the sharing of commercially sensitive information before approval may be viewed as an action in furtherance of the transaction and may therefore raise standstill concerns.²³ The risk is not confined to the final use of the information. The mere availability of the sensitive information to the personnel responsible for day-to-day commercial decisions may affect how those decisions are made.

This is why information-sharing protocols matter. The parties should identify the information genuinely required for due diligence or regulatory review. Excessive disclosure should be avoided completely. Where any disclosure is necessary, it should be limited in scope, purpose and duration. In short, the buyer needs enough information to evaluate the deal. It does not need access to the target's entire competitive playbook.

3.3. PRE-CLOSING COVENANTS AND INTEGRATION PLANNING

Pre-closing covenants are common in share purchase agreements and merger documents. They are intended to preserve the target's value between signing and closing. Typical covenants may require the target to operate in the ordinary course of nature, avoid major acquisitions, refrain from issuing new securities or obtain consent before undertaking unusually significant transactions. Such provisions are not automatically unlawful. A buyer has a legitimate interest in ensuring that the target is not materially altered before closing. The problem arises when the covenants go beyond value of preservation and give the buyer excessive influence over ordinary-course business decisions.

The CCI has emphasised the need for proportionality and precision in contractual arrangements governing pre-closing conduct. In its consideration of the Adani Green

²² Organisation for Econ. Co-operation & Dev. [OECD], *Suspensory Effects of Merger Notifications and Gun Jumping—Note by India*, DAF/COMP/WD(2018)97, 15–17 (2018).

²³ Competition Commission of India, *Frequently Asked Questions & Answers Relating to Combinations, Questions on Precautions to Be Taken After Notification and Before Approval* (2025).

Energy matter, the Commission observed that the restrictions intended to preserve economic value should be objective in nature, precise and commensurate with their purpose. The safeguards should not become a means of interfering with the target's ordinary activities.²⁴

Integration planning creates for a similar concern. Parties may need to plan information-technology systems, employee transitions, supply chains and business operations. This is commercially sensible, especially where the period between the signing and closing is long. Still, planning should not become actual integration. Employees should not be jointly managed before closing. Businesses should not coordinate prices or divide customers. The parties must prepare for the transaction without acting as if it has already happened.

3.4. CLEAN TEAMS AND LEGITIMATE PRE-CLOSING ACTIVITIES

A clean team is one of the principal safeguards used to reduce the risks associated with information exchange. It generally consists of a limited group of individuals, such as external advisers, internal legal personnel, selected senior managers or independent consultants. Their role is to review sensitive information for a defined transaction related purpose without allowing that information to influence any ordinary commercial conduct.²⁵

A properly designed clean team should have clear membership rules, confidentiality obligations, access restrictions, reporting procedures along with limits on onward disclosure. Personnel involved in pricing, marketing, sales, procurement or other competitive functions should ordinarily be excluded from being a part. The arrangement must also operate in practice. A clean-team policy on paper is not enough.

The CCI has made this point clearly. Clean teams may reduce the risk of unlawful information exchange, but their effectiveness depends on their composition and rules of engagement. Inadequate safeguards will not automatically protect the parties.²⁶

Legitimate pre-closing activities therefore remain possible. Due diligence, regulatory filings, financing, valuation, ordinary-course operations and carefully controlled integration planning may all proceed. The guiding principle is

²⁴ Adani Green Energy Ltd., Combination Registration No. C-2021/05/837, Competition Comm'n of India, Order; Competition Comm'n of India, Frequently Asked Questions & Answers Relating to Combinations, Questions on Precautions to Be Taken After Notification and Before Approval (2025)

²⁵ Competition Comm'n of India, Compliance Manual for Enterprises, at 38 (2022).

²⁶ Adani Green Energy Ltd., Combination Registration No. C-2021/05/837, Competition Comm'n of India, Order; Competition Comm'n of India, Fair Competition, at 20 (2022).

independence. The parties may prepare for closing, but they must continue to compete independently until the transaction is lawfully implemented.

4. CCI'S APPROACH TO GUN-JUMPING: KEY DECISIONS AND ENFORCEMENT

4.1. EVOLUTION OF THE CCI'S APPROACH

The CCI's approach to gun-jumping has developed over time. Initially, the focus was largely on whether parties had failed to notify a notifiable combination or had completed a transaction before obtaining the approval. The approach now has become wider. The CCI also examines partial implementation, acquisition of control, interconnected agreements and the exchange of sensitive information.

This broader approach makes much more sense. M&A transactions are rarely completed in one single step. An acquirer may obtain influence through voting rights, contractual powers or governance arrangements even before the formal transfer of shares or the combination. Goyal and Bhandari identified similar concerns in their analysis of Indian gun-jumping law, including trigger documents, interconnected transactions, control and penalties.²⁷

The CCI therefore looks beyond the formal structure of a transaction. What matters is the actual effect of the parties' conduct.

4.2. ANALYSIS OFF KEY CCI DECISIONS

The decisions in SCM Soilmech, Etihad Airways and Bharti Airtel had shown how the CCI has approached different forms of gun-jumping.

In SCM Soilmech, the CCI had confirmed that failure to notify a legally notifiable combination could attract action under Section 43A of the Competition Act. This decision made one point clear: merger-control compliance is not merely a procedural formality.²⁸

The Etihad Airways matter highlighted the importance of examining related transaction documents together. An acquisition may involve several agreements dealing with investment, governance and commercial cooperation. The CCI may assess whether these documents are part of one interconnected transaction. Parties

²⁷ Sachin Goyal & Konark Bhandari, Gun Jumping in India: Lessons from Competition Commission of India's Enforcement Activities, 5 J. Antitrust Enforcement 216, 216–25 (2017).

²⁸ SCM Soilmech Pvt. Ltd., Combination Registration No. C-2013/05/162, Competition Comm'n of India, Order (2013); The Competition Act, 2002, No. 12 of 2003, Section 43A (India).

cannot always avoid scrutiny by dividing a transaction into separate contractual steps.²⁹

The question of control is equally important. Majority ownership is not the only route for control. Board rights, voting arrangements, veto powers and other contractual rights may also give an acquirer significant influence over the target. The CCI therefore considers the practical effect of these rights.³⁰

The Bharti Airtel decision is relevant to partial implementation. It reflects the CCI's position that gun-jumping may occur even where a transaction has not been fully completed. The critical question is whether the parties have begun acting as if the transaction has already taken effect or not.³¹

The CCI has also drawn attention to information exchange and integration planning. Due diligence is a necessary step and so is regulatory preparation. But these activities may become problematic if they influence pricing, sales, marketing or other ordinary-course decisions.³² The CCI's approach is therefore substance based. It asks what rights were created, how they were used and whether the parties remained commercially independent or not.

4.3. PENALTIES AND ENFORCEMENT TRENDS

Section 43A of the Competition Act permits the CCI to impose penalties for non-compliance with the statutory notification framework. The provision encourages timely notification with the CCI and discourages parties from implementing transactions before meeting the applicable legal requirements.³³

The seriousness of a violation may depend on the duration of the default, the extent of implementation, the parties' cooperation and the impact of the conduct. Still, much uncertainty remains. Complex transactions often involve staged investments, broad pre-closing covenants and extensive information sharing.

The CCI's message to M&A parties is straightforward. Notification requirements should be assessed early. Related agreements should be reviewed together. Pre-closing rights should be narrowly drafted. Sensitive information must be carefully

²⁹ Etihad Airways PJSC, Combination Registration No. C-2013/05/122, Competition Comm'n of India, Order (2013); Goyal & Bhandari, *supra* note 1, at 219–23.

³⁰ The Competition Act, 2002, No. 12 of 2003, Section 5, Explanation (a) (India).

³¹ Bharti Airtel Ltd., Combination Registration No. C-2017/10/531, Competition Comm'n of India, Order (Aug. 27, 2018).

³² Competition Commission of India, Frequently Asked Questions & Answers Relating to Combinations, Questions on Precautions to Be Taken After Notification and Before Approval (2025).

³³ The Competition Act, 2002, No. 12 of 2003, Section 43A (India).

controlled. Parties may prepare for closing. They must not behave as though closing has already occurred.

5. CRITICAL ANALYSIS: BALANCING M&A EFFICIENCY AND COMPETITION ENFORCEMENT

5.1. CHALLENGES FOR M&A PARTIES

The standstill obligation creates practical difficulties for M&A parties. The period between signing and closing usually involves many steps including due diligence, financing, regulatory filings and integration planning. These activities require cooperation. However, the parties must still operate independently until approval.

The risk is greater where the parties are competitors to each other. Sharing information about prices, customers, costs or business strategies may influence competitive behaviour. Similarly, broad consent rights may allow the acquirer to interfere with the target's ordinary business decisions. Such conduct can increase transaction costs and delay closing.³⁴

5.2. WHEN DOES LEGITIMATE PRE-CLOSING ACTIVITY BECOME GUN-JUMPING?

Not every activity between signing and closing amounts to gun-jumping. Financial due diligence, valuation, regulatory preparation and financing are generally considered legitimate. The difficulty begins when these activities move beyond preparation and affect the parties' commercial independence.

For example, a buyer may review the target's financial records, but should not use due diligence to influence pricing or customer decisions. A covenant requiring the target to preserve its value may be reasonable. A right to approve routine business decisions may, however, create practical control.

The CCI has warned that information exchange and post-signing integration planning may create risks if they influence ordinary course of business activities.³⁵ Clean teams, restricted data rooms and confidentiality arrangements can reduce these risks, although they cannot eliminate them entirely.³⁶ The central question is whether the activity prepares for a future transaction or begins to implement it.

³⁴ Org. for Econ. Co-operation & Dev. [OECD], *Suspensory Effects of Merger Notifications and Gun Jumping*, OECD Roundtables on Competition Policy Papers No. 276, at 25–30 (2018)

³⁵ Competition Commission of India, *Frequently Asked Questions & Answers Relating to Combinations*, Questions on Precautions to Be Taken After Notification and Before Approval (2025).

³⁶ OECD, *supra* note 1, at 26–29

5.3. THE NEED FOR GREATER REGULATORY CERTAINTY

The CCI's substance based approach is necessary to prevent the parties from avoiding the standstill obligation through staged transactions or carefully drafted agreements. Yet uncertainty can also discourage the legitimate M&A activity.

The CCI should provide more clearer guidance on permissible pre-closing covenants, information-sharing arrangements, clean teams and integration planning. Greater clarity is also needed regarding the meaning of control, particularly in minority investments and transactions involving veto or governance rights.³⁷

The objective should not be weaker enforcement rather it should be more predictable enforcement. M&A parties must be allowed to prepare for closing, but they must not act as though the transaction has already been completed.

6. RECOMMENDATION AND CONCLUSION

6.1. PROPOSED FRAMEWORK FOR REGULATING PRE-CLOSING CONDUCT

The CCI should adopt a clearer, risk-based framework for the regulating pre-closing conduct. This would protect competition while allowing parties to prepare efficiently for closing. Certain activities should be treated as presumptively permissible which could include financial and legal due diligence, valuation, financing, regulatory filings and general integration planning. These activities normally do not transfer control or affect competitive independence.³⁸

Other activities should be conditionally permissible. These include sharing commercially sensitive information, detailed integration planning and imposing pre-closing covenants. They should be subject to safeguards such as clean teams, confidentiality agreements, restricted data rooms and limited access to sensitive information. Employees involved in pricing, sales and marketing should generally be excluded from such arrangements.³⁹

Activities such as transferring decision-making authority, coordinating prices or customers, implementing commercial arrangements or exercising effective control

³⁷ Prateek Bhattacharya, Competition Commission of India's "Control" Conundrum—Practice, Precedent, and Proposals, 17 Eur. Competition J. 473, 473–505 (2021).

³⁸ Competition Commission of India, Compliance Manual for Enterprises (2017); OECD, *supra* note 1, at 26–29.

³⁹ Competition Commission of India, Compliance Manual for Enterprises (2017); OECD, *supra* note 1, at 26–29.

before approval should be treated as presumptively prohibited. The CCI should examine the practical effect of the conduct rather than merely its contractual form.⁴⁰

The CCI should also clarify the limits of pre-closing covenants. Requirements to preserve the target's value or maintain ordinary business operations may be reasonable. However, broad rights to approve routine business decisions may create de facto control. Covenants should therefore be necessary, proportionate and narrowly drafted⁴¹

Finally, M&A parties should maintain written compliance protocols covering information access, clean-team membership, disclosure records and integration activities. Clearer guidance would not weaken enforcement. It would make compliance more predictable.

6.2. CONCLUSION

Gun-jumping creates a difficult balance in Indian M&A transactions. Parties must prepare for closing, but they cannot act as though the transaction has already been completed.

The CCI's approach shows that gun-jumping is not limited to the formal transfer of ownership. It may also arise through partial implementation, excessive information exchange, control rights or premature integration.⁴²

At the same time, uncertainty may increase transaction costs and delay legitimate business activity. The solution is not to weaken the standstill obligation, but to clarify its practical limits.

Clean teams, restricted information-sharing, carefully drafted covenants and proper compliance procedures should become standard features of M&A transactions. The CCI should encourage these safeguards while continuing to penalise conduct that undermines competitive independence.

Ultimately, the principle is simple: parties may prepare for a transaction, but they must not implement it before receiving the necessary approval.

⁴⁰ Sachin Goyal & Konark Bhandari, Gun Jumping in India: Lessons from Competition Commission of India's Enforcement Activities, 5 J. Antitrust Enforcement 216, 216–25 (2017).

⁴¹ Bharti Airtel Ltd., Combination Registration No. C-2017/10/531, Order (Comp. Comm'n of India Aug. 27, 2018); Competition Commission of India, Frequently Asked Questions & Answers Relating to Combinations, Questions on Precautions to Be Taken After Notification and Before Approval (2025).

⁴² Competition Act, 2002, No. 12 of 2003, § 6(2A) (India); Competition Commission of India, Frequently Asked Questions & Answers Relating to Combinations, Qs. 141–150 (2025).