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# **GUN-JUMPING IN INDIAN M&A: REASSESSING THE PENALTY FRAMEWORK UNDER THE COMPETITION (AMENDMENT) ACT, 2023**

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## **ABSTRACT**

Gun-jumping is the practice of entering into or carrying out a merger or acquisition transaction before receiving regulatory authorization. In recent years, one of the most pursued areas of India's competition law enforcement regime has been the application of competition law to gun jumping. This paper examines and analyses the Indian gun-jumping prohibition and penalty process under the Competition Act of India, with a particular emphasis on recent changes to the process and its implications for deterrence and compliance as a result of structural changes enacted by the Competition (Amendment) Act, 2023.

Three significant systemic weaknesses were discovered in an empirical evaluation of Competition Commission of India (CCI) enforcement orders from 2013 to 2025. First, regardless of the amount of the transaction, the fines levied under Section 43A have been consistently inadequate and disproportionate to its economic value; with penalties consistently remaining at nominal levels that bear little relationship to the scale of the underlying transaction. Second, the discrepancy between statutory fines and actual enforcement procedures still results in a continued inability of the enforcement framework to produce credible deterrence in practice. This is primarily due to the widespread use of reactive enforcement strategies and the logical noncompliance choices made by astute transaction participants. Third, the 2023 Amendment introduces a normative inconsistency: the simultaneous strengthening of Section 43A and the introduction of the Section 6A open market exemption creates an unresolved structural tension at the heart of India's post-2023 merger control architecture.

The paper concludes with a set of four specific reform proposals for the penalty structure, deterrence threshold, definitional clarity of gun-jumping standards, and consistent application of clean team guidelines; all of these reforms require no additional legislative action, only operational commitment on the part of the CCI.

## 1. INTRODUCTION

### 1.1 Background

Merger control plays a central role in modern competition law. To prevent combinations that may harm market competition from taking effect without scrutiny, competition authorities use pre-merger notification procedures that require parties to file with the authorities for prior approval before implementation. In India, this framework is governed by the Competition Act, 2002, and administered by the Competition Commission of India (CCI). The parties must notify the CCI of proposed combinations that meet certain asset and turnover thresholds specified in Section 5 of the Act and cannot proceed with the combination until they have received clearance or the relevant waiting period has expired.

### 1.2 Concept of Gun Jumping

“Gun-jumping” is the practice of companies implementing a combination before obtaining the necessary regulatory approval from competition authorities. The phrase "gun-jumping" comes from a football metaphor when an athlete starts running before the whistle blows, breaking the rules. There are two types of gun-jumping. The first method is procedural gun-jumping, which happens when a business closes the deal before the standstill period has passed or fails to notify the relevant authority. The second method is substantive gun-jumping, which entails companies integrating businesses, sharing confidential commercial information, controlling the target company, and coordinating their competitive actions without prior approval. Such conduct undermines the integrity of merger review by presenting a completed or partially implemented transaction. As a result, gun-jumping may cause irreversible competitive harm. In the Indian context, gun-jumping is understood as any action pursuant to a proposed combination that has the effect of consummating it, or any part thereof, before the CCI's approval is obtained or the standstill period under Section 6(2A) expires.

Gun-jumping takes two forms depending on the nature of the violation. Procedural gun jumping occurs when parties to a merger fail to notify the appropriate competition authority of notifiable transactions within the prescribed period or consummate the combination before the expiry of the standstill period. Under Section 6(2A) of the Act, any implementation of a combination is forbidden until CCI grants approval or until 150 days

have elapsed since the day of notification.<sup>1</sup> The Supreme Court confirmed in *SCM Solifert Ltd. v. Competition Commission of India* that “*mens rea is not a requirement to be fulfilled to impose a penalty under Section 43A of the Act. Such a requirement is only applicable to disputes of criminal and quasi-criminal nature, whereas failure to notify is a violation of a civil statutory provision.*”<sup>2</sup>

Substantive gun jumping would involve improper pre-approval integration of the parties to a transaction, such as sharing commercially sensitive information, allocating customers, or preventing competing marketing while the waiting period is underway.<sup>3</sup> The CCI has established that the test for substantive gun-jumping is whether the parties are continuing to act independently and compete as they were prior to the proposed combination.<sup>4</sup> Further, the CCI has identified several categories of conduct as constituting substantive gun-jumping, including partial payment of consideration, provision of corporate guarantees by the acquirer, insertion of anteriority clauses specifying notional operational control prior to approval, and premature exchange of commercially sensitive information.<sup>5</sup>

Underlying both forms of gun-jumping is the standstill obligation, which prohibits parties from implementing any part of a combination without CCI approval, ensuring that the CCI can assess competitive impact before irreversible integration occurs.<sup>6</sup> In evaluating whether this obligation is violated the CCI applies two questions: first, whether the parties have ceased competing in the manner they were competing before the proposed combination; and second, whether they have ceased to act independently in the ordinary course of business prior to approval of the CCI.<sup>7</sup> Notably, the Competition (Amendment) Act, 2023,

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<sup>1</sup> Narula & Kapai, *Jumping the Gun: A Legal Vacuum in the Competition Law in India?*, NEETI NIYAM (MAR. 25, 2026, 9:39 AM), <https://neetiniyaman.com/gun-jumping-competition-law-india/>.

<sup>2</sup> *SCM Solifert Limited and Another v. Competition Commission of India*, 2018 INSC 354.

<sup>3</sup> Dr. Ravikant Bhardwaj, *Working Paper on Business Implications of Gun Jumping in Combination Regulations*, 01 IICA 4, <https://iica.nic.in/images/Working%20Paper%20on%20Business%20Implications%20of%20Gun%20Jumping%20in%20Combination%20Regulations.pdf>.

<sup>4</sup> Avantika Tiwari, *Gun Jumping In Indian Competition Law – The Need to Redefine Contours*, ARBITRATION & CORPORATE LAW REVIEW (MAR 20, 2026 7:30 PM), <https://www.arbitrationcorporatelawreview.com/post/gun-jumping-in-indian-competition-law-the-need-to-redefine-contours#viewer-fh9m6>.

<sup>5</sup> Sakshi Saran Agarwal, *Jumping the Gun – An Antitrust Law Perspective*, IRCCL (MAR 20, 2026 7:40PM), <https://www.irccl.in/post/jumping-the-gun-an-antitrust-law-perspective>.

<sup>6</sup> dar, Agrawal, et. al., *Competition (Amendment) Act, 2023 Comes Into Effect ‘Partially’*, MONDAQ (MAR 30, 2026, 11:35 AM), <https://www.mondaq.com/india/cartels-monopolies/1323342/competition-amendment-act-2023-comes-into-effect-partially>.

<sup>7</sup> Ved Prakash, *An Analysis Of Gun-Jumping Under The Indian Competition Law Vis-À-Vis The Present Scenario: The Need For A Clear Jurisprudence*, VII IJLLR, <https://www.ijllr.com/post/an-analysis-of-gun-jumping-under-the-indian-competition-law-vis-a-vis-the-present-scenario-the-nee>.

introduced Section 6A, which provides a limited exception to the standstill obligation for open market purchases and transactions through regulated stock exchanges, subject to timely notification and the acquirer refraining from exercising any ownership or beneficial rights until clearance is received.<sup>8</sup> The normative tension created by this exception, together with the concurrently strengthened penalty system, is the primary focus of this research.

### 1.3 Problem Statement

Over the last 12 years, since the CCI's merger control jurisdiction was enforced in 2011, the existing punishment structure for gun-jumping offenses in India has evolved into a weak deterrent. Empirical evidence shows repeated instances in which the amount of penalties imposed under Section 43A has been disproportionately low (i.e., INR 4 lakh to INR 1 crore) in comparison to the value of the underlying transaction.

Furthermore, this trend persists despite the fact that the Competition (Amendment) Act, 2023, has expanded the statutory framework to support enforcement. However, the implementation of the open market purchase rule (Section 6A) has created a new normative conflict that may undermine the amendment's intended deterrent effect.

### 1.4 Research Objectives & Questions

This study aims to answer three crucial questions: First, whether India's sanctions for gun-jumping are sufficient and proportional to the transactional value of the violation; second, whether there is an adequate enforcement structure in place to generate effective deterrents against violating the gun-jumping prohibition; and third, whether the 2023 Amendment is internally coherent given the simultaneous expansion of penalties under Section 43A and the introduction of a new standstill exception under Section 6A. The research draws on CCI enforcement decisions from 2013 to 2025, EU benchmarking, and original doctrinal analysis of the Section 6A paradox. The paper proposes four targeted reform recommendations.

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<sup>8</sup> Roychowdhury, Dalal, et al., *Removal of Standstill Obligations for Open Market Transactions Under the 2023 Competition Amendment Act*, CPI COMPETITION POLICY INTERNATIONAL (MAR 30, 2026 10:30 AM), <https://www.pymnts.com/cpi-posts/removal-of-standstill-obligations-for-open-market-transactions-under-the-2023-competition-amendment-act/>.

## 2. EVOLUTION OF THE PENALTY FRAMEWORK

### 2.1 Pre-Amendment Position and Legislative Gap

Under Section 43A of the Competition Act, 2002, if an enterprise or an individual fails to notify the Commission in accordance with Section 6(2), the Commission may impose a penalty up to one percent of their total turnover or assets, whichever is higher. This provision constitutes the statutory framework of gun-jumping in India. However, a legislative gap exists as Section 43A, as originally enacted, primarily penalized failure to notify under Section 6(2) and did not explicitly address violations of the standstill obligation under Section 6(2A).<sup>9</sup>

The absence of a precise definition of when a combination “comes into effect” reflects a structural weakness in India's merger control framework. This ambiguity creates regulatory uncertainty, where even commercially legitimate preparatory steps can be interpreted as violations.<sup>10</sup>

Section 6(2A) provides that a combination cannot come into effect until 150 days have passed after notification or until the Commission's approval is received, yet the Act does not define what “coming into effect” means. This stands in contrast to jurisdictions like the European Union, where EU Regulation 139/2004 links implementation to a “lasting change in control,” providing transacting parties with a clear and objective compliance threshold.

**The lack of a defined standard means that there is ambiguity as to what is meant by the term “effect” and whether it includes actions like pre-payments, contractual arrangements, due diligence processes, and the exchange of commercially sensitive information between parties.**<sup>11</sup>

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<sup>9</sup> Dr. Ravikant Bhardwaj, *Working Paper on Business Implications of Gun Jumping in Combination Regulations*, 01 IICA 4, <https://iica.nic.in/images/Working%20Paper%20on%20Business%20Implications%20of%20Gun-%20Jumping%20in%20Combination%20Regulations.pdf>.

<sup>10</sup> Rashi Kumari, *India's Gun-Jumping Framework: When Does a Combination "Come Into Effect"?*, INDIA CORPLAW (MAR. 27, 2026, 10:00 PM), <https://indiacorplaw.in/2025/09/10/indias-gun-jumping-framework-when-does-a-combination-come-into-effect/>.

<sup>11</sup> *Id.*

## 2.2 Enforcement Philosophy of CCI

The initial application of gun jumping prohibitions in India's merger control regime was marked by regulatory caution rather than strict enforcement. While the Act's legislative provisions required parties to remain in a standstill pending CCI approval, the absence of consistent enforcement reduced the deterrent effect of these obligations. The CCI adopts a case-by-case approach while determining penalties. It considers factors such as the nature of the violation, the structure of the transaction, and conduct of the parties.

The early enforcement record reflects this cautious approach. In *Baxalta/Shire*, the CCI adopted a relatively formalistic interpretation. Although the merger had obvious repercussions for the Indian market, the Commission determined that internal corporate choices outside of India did not constitute a breach. This ruling represented a narrow interpretation of compliance, allowing firms to avoid regulatory scrutiny on technical grounds.<sup>12</sup>

A shift towards substantive scrutiny began with the *Ultratech Cement/Jaiprakash Associates* merger.<sup>13</sup> In this case, the CCI went beyond the documentation and fined Ultratech for acquiring assets without legal authority. This was a significant shift, as the regulator turned its focus from procedural form to **economic substance**, indicating a more sophisticated and aggressive enforcement mindset grounded in the standstill requirements under Section 6(2).

However, deterrence remained limited. Fines were frequently nominal compared to the size of the transactions involved. Regulatory vagueness encouraged parties to act prematurely, regarding prospective fines as manageable cost of compliance rather than a significant legal offense. These early enforcement issues underlined the need for more precise statutory tools and clear directions.<sup>14</sup>

## 2.3 Changes under the Competition (Amendment) Act, 2023

The Competition (Amendment) Act, 2023, strengthened India's merger control regime by refining the concept of gun jumping and improving regulatory oversight. Section 6(2A)

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<sup>12</sup> Kumari, *supra* note 10.

<sup>13</sup> UltraTech Cement Limited: Combination Regn. No. C-2015/02/246.

<sup>14</sup> Kumari, *supra* note 10.

now reinforces the standstill obligation more explicitly by clearly stating that parties involved in a notifiable combination cannot proceed with any part of the transaction until they obtain approval of the CCI. This provision is consistent with Section 43A, allowing the CCI to penalize violations of the standstill clause even in the absence of actual anti-competitive harm, emphasizing procedural strict liability.<sup>15</sup>

Beyond the standstill obligation, the 2023 Amendment introduced three further structural changes. First, a Deal Value Threshold (DVT) was introduced, allowing the CCI to review any combination worth more than INR 2,000 crore, regardless of whether the target meets traditional asset or turnover thresholds. Second, the scope of gun-jumping rules was enlarged to allow the CCI to penalize parties who fail to submit information required to determine whether a non-notified transaction was genuinely reportable.<sup>16</sup> Third, Section 6A was introduced, providing an exception to standstill obligations for open market purchases and transactions on a regulated stock exchange. While this exception facilitates time-sensitive acquisitions of listed companies, it also creates a normative tension regarding whether the expansion of penalty and the exemption of standstill obligations are consistent with deterrence objectives of the amendment.

The 2023 Amendment is a significant step forward in the legislation, but its deterrent value is dependent on how aggressively and consistently the CCI enforces its standards.

### 3. EMPIRICAL ANALYSIS OF ENFORCEMENT PRACTICE

#### 3.1 Key CCI Cases

Gun-jumping laws enforced by the CCI have evolved from procedural formality toward substantive scrutiny. The following cases illustrate this trend across different phases of enforcement.

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<sup>15</sup> Krishnan and Pradhan, *BEFORE THE WHISTLE: CRITICAL ANALYSIS ON INDIA'S GUN JUMPING SHIFT*, NUALS LAW JOURNAL (MAR. 27, 2026, 8:39 PM), <https://nualslawjournal.com/2026/02/03/before-the-whistle-critical-analysis-on-indias-gun-jumping-shift/>.

<sup>16</sup> Chand, Prateek, et al., *India: Overhaul of Regime Set to Reshape Competition Landscape*, LEXOLOGY (MAR. 27, 2026, 9:45 PM), [https://www.lexology.com/library/detail.aspx?g=d1c3eac1-7a24-44be-b211-64823-64f6699#:~:text=It%20\(%20The%20CCI%20\)%20is%20also,outcome%20of%20such%20investigations%20can%20be%20expected.](https://www.lexology.com/library/detail.aspx?g=d1c3eac1-7a24-44be-b211-64823-64f6699#:~:text=It%20(%20The%20CCI%20)%20is%20also,outcome%20of%20such%20investigations%20can%20be%20expected.)

- In the Jet-Etihad case,<sup>17</sup> Etihad requested approval to acquire a 24% equity stake in Jet Airways. While approving the transaction, the CCI noted that certain provisions of the commercial cooperation agreement had already been implemented and that the sale of Jet Airways' landing and take-off slots at London Heathrow Airport had not been notified for CCI's approval prior to the acquisition transaction. This sale was deemed evidence of premature implementation and Etihad received a penalty for failing to meet their standstill requirements.<sup>18</sup>
- Subsequent cases including Hindustan Colas (2015) and Bharti Airtel (2018) further refined the CCI's approach to part-consummation and interim covenants respectively.
- The National Thermal Power Corporation (NTPC) was fined INR 40 lakh by the CCI for acquiring an additional 35.47% of Ratnagiri Gas and Power Limited (RGPPL) in December 2020, increasing its shareholding from 25.51% to 60.98% without notifying the CCI. NTPC's argument that the purchase qualified for a regulatory exemption was denied by the CCI. The Commission imposed a fine under Section 43A, as failure to notify a notifiable combination constitutes gun jumping.<sup>19</sup>
- The acquirers involved in the acquisition of UPL Sustainable Agri Solutions Limited (Target) were penalized by the CCI for gun jumping in an acquisition that was notified through the Green Channel route. The group entities of the Acquirers and the Target in this instance had horizontal overlaps. The Commission held that the existence of overlaps disqualified the transaction from the Green Channel route, rendering deemed approval under the Green Channel route invalid. As a result, the CCI held the acquirers accountable for completing the transaction without any approval and fined them INR 50 lakh under Section 44 of the Competition Act for giving false information and INR 5 lakh under Section 43A of the Competition Act for gun jumping. **The case illustrates that misuse of procedural mechanisms such as the Green Channel route can still result in gun-jumping liability.**<sup>20</sup>

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<sup>17</sup> Etihad Airways PJSC and Jet Airways (India) Limited: Combination Registration No. C-2013/05/122.

<sup>18</sup> *Id.*

<sup>19</sup> *Competition Law Newsletter- September 2023*, DKS LEGAL, <https://dsklegal.com/wpcontent/uploads/2025-08/Competition-Law-Newsletter-September-2023.pdf>.

<sup>20</sup> Platinum Jasmine A 2018 Trust and TPG Upswing Ltd.: Combination Regn. No. C-2022/12/995.

### 3.2 Patterns in Penalty Imposition

According to an analysis of CCI's enforcement operations against gun-jumping, the majority of the penalties issued under Section 43A were relatively small compared to the value of the underlying transaction. For example, in the early years of enforcement, the amount levied on Hindustan Colas was as low as INR 5 lakh;<sup>21</sup> for Avago/Broadcom, it was approximately INR 10 lakh;<sup>22</sup> and for Jet-Etihad, it was INR 1 crore.<sup>23</sup> <sup>24</sup> Similarly, NTPC received a penalty of INR 40 lakh, Manipal Health Systems received a penalty of INR 20 lakh,<sup>25</sup> and CA Plume Investments received a penalty of INR 4 lakh.<sup>26</sup> This disparity is particularly striking given that Section 43A, as amended in 2023, permits penalties up to 1% of the global turnover or assets of the combination, a ceiling that the CCI has consistently refrained from approaching in gun-jumping cases. This pattern reflects a broader trend where penalty outcomes exhibit a narrow band of low-value sanctions, despite significant variations in transaction size.

When comparing fines imposed under Section 43A of the Act to penalties imposed under the CCI's powers under section 44 and 45, there appears to be a considerable difference between the two punishment regimes. For example, in the case of Amazon v. Future Coupons Private Limited (2021),<sup>27</sup> the CCI issued an INR 202 crore penalty under Sections 44 and 45 for misrepresenting or suppressing material facts, but no penalty was given under Section 43A. This shows that although the CCI has authority to impose substantial penalties, it has exercised restraint in gun-jumping cases. As a result, the low penalty under Section 43A is **from an apparent policy choice rather than a lack of legal authority.**

Against this backdrop of policy-driven restraint, it is worth noting, however, that the CCI (Determination of Monetary Penalty) Guidelines, 2024, have since been issued, offering for the first time a formal framework for penalty computation based on worldwide turnover. The effectiveness of these guidelines **in addressing these inconsistencies** above

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<sup>21</sup> Hindustan Colas Private Limited: Combination Regn. No. C-2015/08/299.

<sup>22</sup> Avago Technologies Limited: Combination Regn. No. C-2015/09/312.

<sup>23</sup> *Etihad Airways PJSC and Jet Airways (India) Limited: Combination Registration No. C-2013/05/122.*

<sup>24</sup> *CONCEPT OF GUN-JUMPING AND ITS PENALTY PROVISION*, JLRJS (MAR. 26, 2026, 5:19 PM), <https://jlrjs.com/concept-of-gun-jumping-and-its-penalty-provision/>.

<sup>25</sup> Manipal Health Systems Private Limited and MEMG Family Office LLP: Combination Regn. No. C-2024/05/1142.

<sup>26</sup> CA Plume Investments and Bequest Inc. Combination Regn.: No. C-2023/10/1066.

<sup>27</sup> Amazon.Com NV Investment Holdings LLC Proceedings under Sections 43A, 44 and 45 of the Competition Act, 2002.

will be assessed as they are applied to gun-jumping instances under Section 43A in the coming years.

The absence of a penalty methodology is further complicated by the strict liability standard governing Section 43A. In *SCM Soilfert Ltd. v. CCI (2018)*, the Supreme Court held that a party found to have infringed Section 43A is strictly liable because there is no need to demonstrate intent to violate the law. Accordingly, liability arises irrespective of intent, although factors such as good faith or absence of mala fide conduct may be considered in determining the quantum of penalty.<sup>28</sup> However, when determining sanctions, CCI has taken “mitigating factors” into account (e.g., lack of mala fide intent, lack of previous violation, voluntary disclosure of information, whether or not a transaction was completed), and many of these same factors were taken into account in determining penalty reductions in the Piramal/Shriram case, resulting in the final penalty being reduced to INR 5 crore.<sup>29</sup> The issue here is not that the aforementioned variables are considered, but rather that there is no documented sentencing matrix or accessible technique for calculating how the judgment was reached. For example, essentially identical mitigating conditions of cooperative conduct, absence of AAEC, and an involuntary trigger resulted in penalties of INR 20 lakh in Manipal<sup>30</sup> and INR 40 lakh in NTPC.<sup>31</sup> However, no published technique explains the disparity in penalties. This unpredictability undermines both compliance planning and deterrence because the transaction parties have little certainty about their regulatory exposure prior to the transactions. When seen through a comparative lens, the European Union employs structured punitive measures based on the turnover, whereas the United States uses a statutory penalty framework. The absence of a structured penalty mechanism equivalent to those found in developed jurisdictions such as the European Union risks rendering India's gun-jumping enforcement regime as an exercise in regulatory symbolism rather than effective deterrence.

### 3.3 Green Channel Misuse and Emerging Trends

The Green Channel was created by Regulation 5A of the CCI (Procedure in regard to the

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<sup>28</sup> Goel & Deo, *Composite Transactions and Market Purchases: Supreme Court Upholds Penalty for Gun Jumping in Thomas Cook and SCM Soilfert Cases*, <https://www.competitionpolicyinternational.com/wp-content/uploads/2018/05/Recent-India-S.C.-Decision.pdf>.

<sup>29</sup> CONCEPT OF GUN-JUMPING AND ITS PENALTY PROVISION, *supra* note 24.

<sup>30</sup> *Manipal Health Systems Private Limited and MEMG Family Office LLP: Combination Regn. No. C-2024/05/1142*.

<sup>31</sup> NTPC Limited: Combination Regn No. M&A/01/2021/03/CD.

transaction of business relating to combinations) Regulations in 2019 to expedite transactions where there are no horizontal, vertical, or complementary overlaps between the parties.<sup>32</sup> By using this method, the parties can ascertain their eligibility and submit a Form I along with a declaration attesting to the lack of overlaps. Once the filing is made, approval is deemed to be granted automatically. However, the CCI has begun to scrutinize these Green Channel declarations more closely post-filing. A trend of misuse has emerged, creating a new form of gun-jumping liability.<sup>33</sup>

The Platinum Jasmine Case (2023)<sup>34</sup> represents the first significant case arising from green channel misuse that resulted in gun jumping liability. In this example, the CCI determined that due to horizontal overlaps, the transaction was not qualified for the green channel route, invalidating the deemed approval and exposing the parties to dual liability.<sup>35</sup> The Commission imposed fines of INR 5 lakh under Section 43A for gun-jumping and INR 50 lakh under Section 44 for providing false information, confirming that void ab initio approvals offer no regulatory protection.<sup>36</sup>

## 4. CRITICAL EVALUATION OF THE PENALTY FRAMEWORK

### 4.1 Core Enforcement Gap

The first gap is the lack of a transparent and predictable system for penalties. For example, Section 43A has resulted in penalties ranging from INR 4 lakh to INR 1 crore for roughly identical offenses, with no stated explanation for the variance. Historically, factors such as nature of violation, cooperation with the CCI, and absence of AAEC were considered without a structured sentencing framework. The newly published CCI Guidelines for the Determination of Monetary Penalty, 2024, are significant since they propose a system for determining fines based on global turnover.<sup>37</sup> These Guidelines have not been in place long

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<sup>32</sup> Chand & Banerjee, *CCI Re-Affirms Its Strict Standard in Green Channel Merger Filings*, KAITAN & CO (MAR. 27, 2026, 7:00 PM), <https://www.khaitanco.com/thought-leadership/CCI-re-affirms-its-strict-standard-in-Green-Channel-Merger-Filings>.

<sup>33</sup> Vrinda Gaur, *A Compromise with Ease of Doing Business under the Green Channel Route*, CENTRE FOR BUSINESS & COMMERCIAL LAWS, <https://cbcl.nliu.ac.in/competition-law/a-compromise-with-ease-of-doing-business-under-the-green-channel-route/>.

<sup>34</sup> *Platinum Jasmine A 2018 Trust and TPG Upswing Ltd.: Combination Regn. No. C-2022/12/995*.

<sup>35</sup> Chand & Banerjee *supra* note 32.

<sup>36</sup> *Platinum Jasmine A 2018 Trust and TPG Upswing Ltd.: Combination Regn. No. C-2022/12/995*.

<sup>37</sup> PIB Delhi, *CCI Registered 54 Cases of Anti-Competitive Practices/ Antitrust, Received 149 Merger (M&A) Filings in 2025*, MINISTRY OF CORPORATE AFFAIRS (2026), <http://pib.gov.in/PressReleasePage.aspx?PRID=2-225431&reg=3&lang=2>.

enough to provide for an enforcement record of the Guidelines themselves; thus, the past enforcement record, which is characterized by extreme unpredictability, represents the parties' overwhelming experience with transactions under this regime.

Early applications of the Guidelines in post-2024 enforcement suggest penalties averaging approximately 0.2% of the combination's total turnover or assets, which is a meaningful increase from pre-Guidelines practice but still below the 1% statutory ceiling, thereby underscoring the continuing deterrence gap.

According to data released by the Ministry of Corporate Affairs, the CCI registered 54 antitrust matters and received 149 merger filings during calendar year 2025, reflecting intensified post-amendment enforcement activity.<sup>38</sup> Although the number of offenses has increased, as have the number of available penalties to deter violations, gun-jumping violations continue to be detected despite the strengthened framework, indicating that enforcement intensity alone is insufficient to effectively discourage non-compliance.

#### 4.2 Adequacy of Penalties

A penalty framework cannot be judged only based on its maximum penalty amount. The actual penalty levied must be proportionate to the gravity of the offense and the transaction's value. On that basis, India's gun-jumping penalty scheme under Section 43A falls short of what is required for effective enforcement.

The severe discrepancy between penalty amounts and transaction size is demonstrated by the examples given in Section 3. For instance, NTPC was fined INR 40 lakh for acquiring an extra 35.47% of Ratnagiri Gas and Power Ltd without prior notification to the CCI.<sup>39</sup> Similarly, Manipal Health Systems was fined just INR 20 lakh for its January 2024 acquisition of 39.61% of Aakash Educational Services Ltd.<sup>40</sup> In both cases, the amount of the punishment has nothing to do with the value of the economic combination or the violation of the applicable regulations. One fundamental feature of the CCI's enforcement is that pre-2023 penalties were often fixed and tokenistic, though post-2023 amendments

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<sup>38</sup> *Id.*

<sup>39</sup> *NTPC Limited: Combination Regn No. M&A/01/2021/03/CD.*

<sup>40</sup> *Manipal Health Systems Private Limited and MEMG Family Office LLP: Combination Regn. No. C-2024/05/1142.*

link them to turnover.<sup>41</sup> To contextualise this figure, NTPC's acquisition of the additional stake in RGPPL involved a transaction valued at approximately INR 1,500 crore, meaning that the INR 40 lakh penalty represented approximately 0.003% of the transaction value, a quantum wholly incapable of generating rational deterrence.

This disproportion is not coincidental; penalties are structurally overshadowed by the financial incentives that drive gun-jumping conduct, demonstrating the ineffectiveness of penalties as a deterrent to illegal activity. Before obtaining regulatory approval, parties can trade secret information, assign clients, and cease competing for their consumers through substantive gun-jumping, which gives them a significant financial advantage.<sup>42</sup> The overall benefits of gun-jumping in situations involving substantial sums of money may greatly outweigh the punishment that would eventually be imposed for the behavior. As a result, those businesses will embrace the risk of non-compliance as a typical aspect of conducting business if the anticipated penalty for gun-jumping is less than the anticipated gain from executing a deal before regulatory approval.<sup>43</sup>

The Illumina/GRAIL case before the European Commission is a clear example of this calculation. In this case, Illumina assessed its risk of being fined for “gun-jumping,” which is the practice of prematurely implementing conditions of a merger or acquisition before receiving regulatory approval, against its breakup fee of USD 300 million and the profits from implementation at an earlier date, and proceeded despite the possibility that regulators could impose a fine.<sup>44</sup> The inadequacy of India's far lower penalty structure is evident if rational actors make the same assessment in a jurisdiction with a 10% cap on global turnover.

To demonstrate the inadequacies of India's merger control regime, a comparison of penalty regimes exposes significant discrepancies between the EU and India's attempts to achieve the same goals. According to Articles 7(1) and 14(2) of EC Regulation No. 139/2004, the European Commission may impose fines up to 10% of the undertaking's global aggregate

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<sup>41</sup> Bhardwaj, *supra* note 3.

<sup>42</sup> Bhardwaj, *supra* note 3.

<sup>43</sup> *APPLICABILITY OF THEORY OF DETERRENCE UNDER THE COMPETITION LAW*, JUS CORPUS LAW JOURNAL (MAR 29, 2026, 10:12 AM), <https://www.juscorpus.com/applicability-of-theory-of-deterrence-under-the-competition-law/>.

<sup>44</sup> *Gun Jumping” under EU Merger Control Laws*, COMMEO (MAR 29, 2026 7:00 PM), <https://www.commeo-law.com/en/gun-jumping-under-eu-merger-control-laws/>.

revenue<sup>45</sup> for violations of the gun-jumping prohibition. India's maximum fine for violating the gun-jumping restriction is up to 1% of the total turnover or assets of the combination, whichever is higher. The European Commission imposed a maximum penalty of EUR 432 million on Illumina Inc in July 2023 for finalizing its acquisition of GRAIL prior to regulatory approval. This is the highest fine for gun-jumping in history.<sup>46</sup> In contrast, India's enforcement history reveals that violators at the lower end of the statutory range are frequently subject to a variety of sanctions. This is not due to a distinct legal structure but rather a lack of determination to enforce. The European Union's enforcement examples demonstrate that effective deterrents through enforcement rely on the proportionality of penalties to transacted values, the application of maximum sanctions for any party that intentionally violates their standstill obligations, and the provision of clear definitions of standstill obligations to transacting parties.

### 4.3 Deterrence Deficit

Two cumulative requirements must be satisfied for effective deterrence in competition law. The expected penalty must exceed the expected benefit of the violation, which is the adequacy question addressed in Section 4.2 above, and the probability of detection must be such that parties cannot reasonably treat their risk as negligible.<sup>47</sup> The entire deterrent system fails where either condition is inadequate. The empirical research in Section 3 revealed two fundamental weaknesses in India's gun-jumping policy, resulting in a combined ineffective deterrence despite legislative reforms.

It has been demonstrated in Section 4.2 that the penalties under Section 43A are consistently insufficient to outweigh the anticipated economic benefits of premature deal implementation. This is because competition law presumes that corporate entities make rational decisions by balancing the costs and benefits of non-compliance,<sup>48</sup> according to deterrence theory. Therefore, businesses will prefer violating the law if they think the punishment for doing so would be less than the anticipated benefit they would receive from implementing deals before approval. In this case, the parties chose to break the law as

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<sup>45</sup> *Id.*

<sup>46</sup> *Mergers: Commission Fines Illumina and GRAIL for Implementing Their Acquisition without Prior Merger Control Approval*, EUROPEAN COMMISSION (2023), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3773](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3773).

<sup>47</sup> APPLICABILITY OF THEORY OF DETERRENCE UNDER THE COMPETITION LAW, *supra* note 43.

<sup>48</sup> *Id.*

a result of their logical reactions to a situation where economic incentives favour violation, rather than because they are unaware of the applicable statute.

The Illumina case confirms that this type of examination will continue to be conducted in jurisdictions with substantially heavier sanctions. Illumina's counsel weighed the danger of a gun-jumping penalty against the USD 300 million breakup fee and went ahead with the transaction.<sup>49</sup> If rational people could perform this calculation using a 10% global revenue-based threshold for fines as a basis for weighing the risk versus the expected reward, the penalty would be even lower in India, especially given that actual penalties imposed have historically been far below even the 1% ceiling on the combination's total turnover or assets.<sup>50</sup>

The deterrence paradox observed in enforcement data collected after 2023 confirms a shortfall in this area. For example, if deterrence were successful, the frequency of breaches for gun jumping would be reduced since parties would have internalized compliance obligations.<sup>51</sup> Instead, even after reform, gun-jumping orders have continued to be issued post-2023. The relatively modest number of pure Section 43A orders appears to reflect improved detection through the Deal Value Threshold mechanism rather than a general increase in violation rates.<sup>52</sup> This suggests that efforts to prevent violations through deterrence have been ineffective and that enforcement efforts appear to be identifying an increasing number of violations simply because there are more to find, demonstrating an increase in the prevalence of enforcement discoveries after 2023 compared to earlier periods. At best, the current framework achieves specific deterrence against individual violators already caught but fails to generate the general deterrence across the market that effective merger control requires. The cycle continues as parties violate, get caught, pay low penalties, and repeat, a pattern that reflects the absence of penalties at levels sufficient to alter sophisticated parties' pre-transaction compliance calculus, which is the ultimate test of effective general deterrence. This systemic gap underscores the need for the structural reforms examined in Section 5 below.

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<sup>49</sup> Gun Jumping" under EU merger control laws, *supra* note 44.

<sup>50</sup> Bhardwaj, *supra* note 3.

<sup>51</sup> APPLICABILITY OF THEORY OF DETERRENCE UNDER THE COMPETITION LAW, *supra* note 43.

<sup>52</sup> PIB Delhi, *supra* note 37.

#### 4.4 Internal Inconsistency in the 2023 Amendment

The Competition (Amendment) Act, 2023, has been widely regarded as a landmark reform of India's merger control regime, strengthening enforcement powers, closing legislative gaps, and aligning India's framework with international best practices. However, a close examination of the Amendment indicates a difference between Section 43A's harsher punishment regime and Section 6A's reduction in the standstill requirement; this tension has received insufficient scholarly attention. This paper argues that these two developments create a normative contradiction that has the potential to undermine the deterrence objectives the Amendment was designed to advance.

If Section 6A is construed in conjunction with the recently extended Section 43A, a normative contradiction arises. The 2023 Amendment expressly extended Section 43A to cover substantive gun-jumping under Section 6(2A) and linked the penalty ceiling to up to 1% of the total turnover or assets of the combination, whichever is higher.<sup>53</sup> Therefore, the question is whether a legislative plan that simultaneously offers statutory exemptions from standstill commitments and raises the penalties for breaking them is internally consistent.

Section 6A introduces three ambiguities that undermine the internal consistency of the 2023 Amendment. First, it is unclear from the definition of “ownership, beneficial rights or interests” whether an acquirer has used these rights after purchasing stocks. The CCI has held, in the *Adani Green Energy Limited (CCI, 2021)*, that access to commercially sensitive information about the target company can constitute material influence, rendering even information-sharing arrangements a potential ground for gun-jumping liability.<sup>54</sup> It is unclear whether an acquirer can own shares in a listed company without having access to any information about the company (and its business operations) if Section 6A is to be interpreted using the influence standard set by the CCI. This is especially true if the acquirer has a sizable investment in the target. Gun-jumping laws aim to enforce this gray area of the boundary between possessing shares and exerting influence over the target. But as of right now, there is no guidance under section 6A regarding where public firms should draw the line.

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<sup>53</sup> dar, Agrawal, et. al., *supra* note 6.

<sup>54</sup> Chand & Banerjee *supra* note 32.

While CCI has issued clarificatory guidance confirming that open market purchasers must refrain from exercising voting rights or any form of influence over the target pending clearance, the precise boundary between passive shareholding and impermissible influence in the context of large strategic acquisitions remains unaddressed by binding judicial or regulatory authority.

Second, prior to Section 6A, any open offer or open market purchase forming part of an interconnected multi-step combination was subject to the standstill obligations governing the entire transaction;<sup>55</sup> it is unclear whether Section 6A allows sophisticated acquisition structures to use the exemption to exempt the first acquisition in such a transaction from the standstill provision. Third, Section 6A offers a set of transactions that are both legally exempt from Section 43A liability and structurally similar to substantive gun-jumping (i.e., partial consummation of a combination prior to CCI approval). This creates an anomaly in which the same economic outcome (an acquirer has acquired shares of a target prior to CCI approval) has different legal consequences depending on whether the acquisition was completed via a private agreement or on the stock exchange. In all scenarios, the economic impact on competition will be the same, as will the CCI's capacity to do its evaluation without irreversible activity having taken place.

Overall, these issues demonstrate that although Section 6A recognizes commercial realities, it creates a fundamental flaw in the deterrence mechanism of the 2023 Amendment. The crucial question of whether Section 6A diminishes the deterrent effect of the amended Section 43A will not be answered until the CCI or courts make a ruling regarding the distinction between gun-jumping liability and allowable open market acquisitions in connection with multi-step combinations. Therefore, until such jurisprudence emerges, Section 6A represents an unresolved normative tension at the heart of India's post-2023 merger control architecture.

## 5. RECOMMENDATIONS AND REFORM PROPOSALS

### 5.1 Structured Penalty Guidelines

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<sup>55</sup> Roychowdhury, Dalal, et al., *Removal of Standstill Obligations for Open Market Transactions Under the 2023 Competition Amendment Act*, CPI COMPETITION POLICY INTERNATIONAL (MAR 30, 2026 10:30 AM), <https://www.pymnts.com/cpi-posts/removal-of-standstill-obligations-for-open-market-transactions-under-the-2023-competition-amendment-act/>.

The most important reform must be a thorough and transparent method for calculating penalties for gun-jumping violations under Section 43A. Although the CCI (Determination of Monetary Penalty) Guidelines, 2024 represent a meaningful step forward, they operate at a general level and do not prescribe gun-jumping-specific factors.<sup>56</sup>

To address this gap, the CCI shall publish a binding penalty matrix that specifies the amount of recommended sanctions based on the relevant economic realities resulting from the gun-jumping infringement. The penalty matrix should thus specify the economic value acquired by the parties upon combination, as well as the duration of each party's violation, and the level of cooperation extended. The CCI should also adopt a structured penalty calculation approach similar to that used by the European Commission.

## 5.2 Strengthening Deterrence

Complementing the need for a structured penalty matrix is the broader question of deterrence quantum. The data from deterrence analysis in Section 4.3 demonstrates that penalties must exceed the anticipated monetary reward from early consummation. The CCI's default position should be that penalties for gun-jumping in deals above INR 1,000 crores will not be less than 0.5% of the particular transaction's total turnover or asset, whichever is higher, unless strong mitigating circumstances exist. This figure is a significant rise over the current effective range of INR 4 lakh to INR 1 crore, but it remains significantly below the statutory ceiling of 1%. Furthermore, CCI should give thorough justifications for its penalty calculations in enforcement decisions, as the European Commission does, so that parties involved in transactions can change their compliance strategy based on the predictability of future enforcement actions.

## 5.3 Clarification of Gun-Jumping Standards

Beyond penalty quantum, a third structural reform is needed to address the definitional uncertainty that creates compliance risk for transacting parties. As stated in Section 2.1, a significant impediment to compliance within this regulatory framework is the lack of a statutory definition of "coming into effect," which continues to cause uncertainty.<sup>57</sup> In response to this situation, CCI should issue regulatory guidance on appropriate pre-closing

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<sup>56</sup> PIB Delhi, *supra* note 37.

<sup>57</sup> Kumari, *supra* note 10.

issues, such as the permissible due diligence arrangements, the minimum standards for the use of clean teams and clean team protocols, the types of interim covenants that meet the inhereance-proportionality standard, and the boundary between information access and material influence as defined in Section 6A. This guidance should specifically address the three ambiguities identified in Section 4.4 of this paper about the applicability of the open market exemption to the first leg of interconnected multi-step combinations.

#### 5.4 Clean Team Guidelines

The case of Adani Green Energy Limited (CCI, 2021)<sup>58</sup> demonstrated that clean team protocols must be functional in order to defend against gun-jumping liability, rather than only existing on paper. Currently, there is no enforceable guideline in India on what constitutes an adequate clean team setup. The CCI should provide binding guidelines for clean teams outlining what types of information may and may not be exchanged with clean team members, the minimum structural criteria for a legitimate clean team procedure, and the results of a clean team failure for penalty mitigation purposes. Few competition authorities have issued comprehensive clean team guidelines. India would therefore be a leader in the pre-closing compliance architecture by doing so, while providing urgent practical direction to transacting parties.

## 6. CONCLUSION

This paper evaluated India's gun-jumping sanction regime using three analytical lenses: empirical enforcement practice, critical evaluation of the sufficiency of sanctions for discouraging unlawful activity, and internal consistency of the Competition (Amendment) Act 2023.

The empirical analysis presented in Section 3 reveals a consistent pattern of disproportionate penalties under Section 43A, with enforcement outcomes repeatedly concentrated at low monetary levels irrespective of transaction size, a pattern that the 2023 amendment has not yet meaningfully altered in practice.

The critical evaluation in Section 4 demonstrates a structural weakness in deterrence outcome. Penalties fall below the anticipated economic benefit of implementing the combination before

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<sup>58</sup> Adani Green Energy Limited, Combination Registration No. C-2021/05/837.

regulatory approval; detections remain predominantly reactive; and the post-2023 amendment enforcement surge has increased the detections of violations without reducing their frequency.

The normative inconsistency identified in Section 4.4, namely the simultaneous strengthening of Section 43A and the introduction of the Section 6A open market exemption, signifies an unresolved structural tension that the Parliament, the CCI, and the courts have yet to address. Until the line between legal open market acquisitions and gun-jumping liability in interconnected multi-step combinations is clearly drawn by the courts, Section 6A will continue to undermine the deterrence goals of the reformed regime.

The analysis in Section 4 demonstrates that India's legislative structure is capable of providing deterrent, effective enforcement: the 1% global turnover cap, the 2024 Determination of Monetary Penalty Guidelines, and the expanded reach of Section 43A give the necessary tools.<sup>59</sup> At present, there appears to be no immediate need for further legislative revision. What India's merger control regime lacks is operational support from CCI, such as taking the necessary steps to impose penalties proportionate to the value of the transaction, publishing a structured rationale to support penalty decisions, and providing clear guidance on permissible pre-closing activity. The legitimacy of India's merger control regime will ultimately be measured by its ability to bridge the gap between *the letter of the law and the reality of its enforcement*.

Going forward, close attention must be paid to the NCLAT's treatment of challenges to Guidelines-based penalties, as this will ultimately determine whether the 2024 framework achieves its stated deterrence objectives in practice.

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<sup>59</sup> PIB Delhi, *supra* note 37.