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# **INTRODUCTION OF DEAL VALUE THRESHOLD IN INDIAN MERGER CONTROL: A CRITICAL ANALYSIS**

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## **ABSTRACT**

The regulation of mergers and acquisitions (M&A) constitutes a fundamental pillar of competition law, designed to prevent the undue concentration of market power. In India, the Competition Act, 2002, empowers the Competition Commission of India (CCI) to scrutinize combinations that may cause an Appreciable Adverse Effect on Competition (AAEC). Traditionally, the jurisdictional reach of the CCI was governed by asset and turnover-based thresholds under Section 5 of the Act. However, the emergence of the digital economy and innovation-driven business models exposed the limitations of these traditional metrics, particularly in capturing 'killer acquisitions' where nascent but strategically significant firms are acquired by dominant players. The Competition (Amendment) Act, 2023,<sup>1</sup> addressed this gap by introducing the Deal Value Threshold (DVT). This article provides a critical analysis of the DVT framework, its legislative evolution, and its implications for the Indian merger control regime, particularly within the digital and technology sectors.

**Keywords:** Competition Law, Merger Control, Deal Value Threshold, Competition Act 2002, Competition (Amendment) Act 2023, Competition Commission of India, Digital Markets, Killer Acquisitions, Antitrust Regulation.

## **I. INTRODUCTION**

The evolution of merger control in India reflects a broader transition from a restrictive, post-facto regulatory regime to a modern, ex-ante framework aimed at fostering competitive markets. Historically, the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act)<sup>2</sup>, focused on curbing the concentration of economic power through a reactive approach. However, the economic liberalization of the 1990s necessitated a more robust and proactive

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<sup>1</sup> Competition (Amendment) Act, 2023, 5(d), No. 9, Acts of Parliament, 2023 (India).

<sup>2</sup> Monopolies And Restrictive Trade Practices Act, 1969(MRTP ACT)

mechanism to handle the increasing volume and complexity of M&A transactions. This led to the enactment of the Competition Act, 2002, which replaced the MRTP Act and established the Competition Commission of India (CCI) as the primary regulator for ensuring market competition.

Under the 2002 Act, Sections 5 and 6 provide the statutory basis for regulating 'combinations,' which include acquisitions, mergers, and amalgamations. Until recently, the notification requirement for such combinations was triggered solely by the value of assets and turnover of the parties involved. While effective for traditional industries, these financial thresholds often failed to capture high-value transactions in the digital and technology sectors, where target companies might possess significant competitive potential despite having minimal assets or revenue. To bridge this regulatory lacuna, the Competition (Amendment) Act, 2023, introduced the Deal Value Threshold (DVT), marking a paradigm shift in India's approach to merger control.

## **II. THE STATUTORY FRAMEWORK OF COMBINATION REGULATION**

The Indian merger control regime is built upon the dual pillars of Sections 5 and 6 of the Competition Act, 2002<sup>3</sup>. Section 5 defines 'combinations' based on specific quantitative thresholds, while Section 6 prohibits any combination that causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India. This ex ante notification system ensures that the CCI can evaluate the potential impact of a transaction before it is consummated, thereby preventing structural changes that could harm consumer welfare.

The introduction of the DVT through the Competition (Amendment) Act, 2023, adds a third dimension to the jurisdictional criteria under Section 5. Specifically, Section 5(d) now stipulates that any transaction with a value exceeding INR 2,000 crore (approximately USD 240 million) must be notified to the CCI, provided the target enterprise has 'substantial business operations in India.' This amendment ensures that acquisitions of innovative startups or data-rich platforms, which might otherwise escape scrutiny due to low turnover, are brought within the regulatory net.

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<sup>3</sup> The Competition Act, 2002, 6, No. 12, Acts of Parliament, 2003 (India).

### **III. JURISPRUDENTIAL FOUNDATIONS AND THE SHIFT TOWARD DVT**

The jurisprudence of merger control is rooted in the objective of maintaining competitive market structures to enhance consumer choice and innovation. Unlike traditional antitrust enforcement, which addresses anti-competitive conduct after it occurs, merger control is inherently preventive. By requiring mandatory notification for transactions that meet certain thresholds, the law enables the CCI to conduct a prospective analysis of market power and potential entry barriers.<sup>4</sup>

The shift toward a deal value-based threshold is a response to the 'killer acquisition' phenomenon, where dominant firms acquire potential rivals in their infancy to eliminate future competition. In such cases, the purchase price often reflects the strategic value of the target's technology or user base rather than its current financial performance.<sup>5</sup> By adopting the DVT, the Indian legislature has aligned its regulatory philosophy with global trends, recognizing that market power in the digital age is increasingly driven by intangible assets rather than traditional financial metrics.<sup>6</sup>

### **IV. COMPARATIVE PERSPECTIVES AND INTERNATIONAL ALIGNMENT**

India is not alone in its adoption of transaction value thresholds. Germany and Austria were among the first jurisdictions to introduce similar measures in 2017 to address the challenges posed by the digital economy. In Germany, the Ninth Amendment to the Act against Restraints of Competition (GWB) introduced a threshold of EUR 400 million for transactions where the target has significant domestic activity. Similarly, Austria implemented a EUR 200 million threshold to capture strategically important acquisitions in the tech sector.<sup>7</sup>

The Indian DVT framework draws inspiration from these international models while tailoring the 'substantial business operations' requirement to local market realities. The Competition Commission of India (Combinations) Regulations, 2024, further clarify this requirement, suggesting that factors such as the number of active users, gross merchandise value, or the

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<sup>4</sup> Massimo Motta, *Competition Policy: Theory and Practice* 231 (Cambridge Univ. Press 2004).

<sup>5</sup> Richard Whish & David Bailey, *Competition Law* 842 (9th ed. 2018).

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<sup>7</sup> Gesetz gegen Wettbewerbsbeschränkungen [GWB] [Act against Restraints of Competition], § 35(1a) (Ger.).

presence of local infrastructure may be considered. This comparative alignment demonstrates India's commitment to maintaining a robust and globally relevant competition law framework.<sup>8</sup>

## **V. IMPLICATIONS FOR THE DIGITAL ECONOMY AND STARTUP ECOSYSTEM**

The introduction of the DVT has profound implications for the digital and startup sectors in India. By lowering the jurisdictional bar for high-value acquisitions, the CCI can now scrutinize deals involving data-driven platforms and innovative fintech or health-tech startups. While this enhances market oversight, it also increases the compliance burden on investors and companies engaged in cross-border transactions.

One of the primary challenges lies in the interpretation of 'substantial business operations in India.' Unlike asset or turnover figures, which are readily available in audited financial statements, determining 'substantial operations' involves a qualitative assessment of the target's engagement with the Indian market. This lack of a bright-line rule may create uncertainty for global M&A activity. However, the CCI has indicated its intent to provide ongoing guidance to ensure that the DVT is applied in a manner that balances the need for competition with the objective of promoting ease of doing business.

## **VI. CONCLUSION**

The introduction of the Deal Value Threshold under the Competition (Amendment) Act, 2023, represents a significant milestone in the evolution of Indian competition law. By moving beyond traditional financial metrics, the legislature has equipped the CCI with the tools necessary to regulate the complex and fast-evolving digital marketplace. While the DVT addresses the critical issue of 'killer acquisitions' and ensures that strategically important deals are scrutinized, its success will depend on the clarity and consistency of its implementation.

As the Indian economy continues to integrate with global digital networks, the CCI must strike a delicate balance between rigorous enforcement and regulatory certainty. Clearer definitions of 'transaction value' and 'substantial business operations' will be essential to minimize the compliance burden on legitimate business expansions. Ultimately, the DVT is a testament to India's proactive approach to competition regulation, ensuring that the market remains open, innovative, and competitive in the face of technological disruption.

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<sup>8</sup> Competition Commission of India (Combinations) Regulations, 2024, Gazette of India, pt. III sec. 4