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# THE DEAL VALUE THRESHOLD UNDER THE COMPETITION ACT, 2002: A GAME CHANGER FOR TECHNOLOGY, STARTUP AND E-COMMERCE M&A IN INDIA

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## ABSTRACT

The introduction of the Deal Value Threshold (DVT) under the Competition (Amendment) Act, 2023 and the CCI (Combinations) Regulations, 2024 marks a paradigm shift in India's merger control regime. Designed primarily to address "killer acquisitions" in digital and technology markets, the DVT requires notification of transactions exceeding INR 2,000 crore where the target has substantial business operations in India, irrespective of its assets or turnover.

This paper analyses the legal framework of the DVT, including the calculation of transaction value and the criteria for determining Substantial Business Operations in India (SBO). It

evaluates the practical impact of the new regime on tech, startup, and e-commerce M&A, highlighting increased compliance costs, valuation uncertainties, and potential delays in deal execution. Drawing from analyses by AZB & Partners, Nishith Desai Associates and Baker McKenzie, the paper also undertakes a comparative study with transaction value thresholds in Germany, Austria, and the United States.

The paper argues that while the DVT effectively plugs into a critical enforcement gap identified by the Competition Law Review Committee (2019), certain ambiguities in valuation methodology and SBO determination persist. It concludes with recommendations for clearer guidelines to balance robust competition enforcement with the ease of doing business in India's digital economy.

**Keywords:** Deal Value Threshold, Competition Act, Merger Control, Killer Acquisitions, Digital Markets, CCI, M&A Regulation.

## 1. Introduction

The Indian merger control regime has undergone a significant transformation with the introduction of the Deal Value Threshold (DVT) under the Competition (Amendment) Act, 2023 and the CCI (Combinations) Regulations, 2024.<sup>1</sup> For more than a decade, the Competition

Commission of India (CCI) primarily relied on asset and turnover thresholds under Section 5 of the Competition Act, 2002. While this framework worked reasonably well for traditional brick-and-mortar businesses, it proved inadequate for the digital economy where many innovative companies operate with low assets and turnover but possess substantial market potential and data-driven competitive advantages.<sup>2</sup>

This regulatory gap became particularly evident in “killer acquisitions”, where dominant players acquire nascent competitors primarily to eliminate future competition. The Competition Law Review Committee (CLRC) in its 2019 report had strongly recommended the introduction of additional thresholds to address such concerns in dynamic markets.<sup>3</sup> Pursuant to these recommendations, the Government introduced the DVT regime, which became effective from 10 September 2024. Under this regime, transactions with a global deal value exceeding INR 2,000 crore must be notified to the CCI if the target has “substantial business operations in India”.<sup>4</sup>

This paper analyses the legal framework of the DVT, its practical implications for technology, startup, and e-commerce M&A transactions, and evaluates whether the new regime strikes the right balance between competition enforcement and the ease of doing business in India.<sup>5</sup>

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<sup>1</sup> Nishith Desai Associates, Deal Breaker or Deal Maker? Deconstructing the “Deal Value Threshold” under the Competition Act, 2002 (19 September 2024) 1.

<sup>2</sup> AZB & Partners, Deal Value Threshold (30 September 2024) 1-2.

<sup>3</sup> Ministry of Corporate Affairs, Report of the Competition Law Review Committee (2019).

<sup>4</sup> Baker McKenzie, what do the Latest Amendments on Merger Control Mean for Dealmaking in India? (18 November 2024) 1; CCI (Combinations) Regulations, 2024, Reg. 4.

<sup>5</sup> Nishith Desai Associates, *supra* note 1.

The acquisition of innovative digital firms often involves targets with limited assets and revenue but immense competitive significance, making traditional merger notification thresholds increasingly inadequate in the digital economy and the ease of doing business in India.<sup>6</sup>

## **2. Evolution of Merger Control in India**

The modern competition law framework in India was established with the enactment of the Competition Act, 2002, which replaced the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969. The Competition Commission of India (CCI) was set up as the primary regulator, and the merger control provisions under Sections 5 and 6 became effective from 1 June 2011.<sup>7</sup>

Under the original regime, a transaction was notifiable only if it crossed the prescribed asset or turnover thresholds. This asset/turnover-based test worked adequately for traditional industries but soon revealed critical limitations in the digital and technology sectors. Many high-value acquisitions of startups and innovative companies with low assets and turnover escaped regulatory scrutiny despite their potential to cause appreciable adverse effects on competition.<sup>8</sup>

The Competition Law Review Committee (CLRC), constituted by the Ministry of Corporate Affairs in 2018, identified this enforcement gap in its July 2019 report. The Committee recommended the introduction of additional thresholds, particularly to address “killer acquisitions” in dynamic markets.<sup>9</sup> This recommendation paved the way for the Competition (Amendment) Bill, 2022, which introduced the Deal Value Threshold (DVT). After parliamentary scrutiny and recommendations by the Standing Committee on Finance, the Competition (Amendment) Act, 2023 was enacted. The detailed framework was operationalized

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<sup>6</sup> Ibid.

<sup>7</sup> Competition Act, No. 12 of 2003, §§ 5–6 (India).

<sup>8</sup> AZB & Partners, Deal Value Threshold (30 September 2024) 1-2.

<sup>9</sup> Ministry of Corporate Affairs, Report of the Competition Law Review Committee (2019).

through the CCI (Combinations) Regulations, 2024, which came into effect on **10 September 2024**.<sup>10</sup>

Notable examples frequently cited in discussions on merger control reform include Facebook's acquisition of WhatsApp, Zomato's acquisition of Uber Eats, and Zomato's acquisition of Blinkit, all of which involved substantial deal values but were not subject to CCI review under the previous framework due to the absence of a transaction-value based threshold.

### **3. Need for the Deal Value Threshold**

The traditional asset and turnover-based thresholds under Section 5(a), (b) and (c) of the Competition Act, 2002 proved inadequate in addressing the competitive concerns arising from high-value transactions, particularly in the digital and technology sectors. Many acquisitions involved targets with minimal assets and turnover, but significant market potential, user base, data, and network effects. Such transactions often escaped CCI scrutiny by availing the de minimis exemption or failing to meet the enterprise-level thresholds.<sup>11</sup>

The Competition Law Review Committee (CLRC) in its 2019 Report highlighted three major issues:

- (i) the absence of residuary powers with the CCI to review non-notifiable transactions;
- (ii) the success of transaction-value thresholds in jurisdictions like Germany and Austria in capturing digital market deals; and
- (iii) several high-value "killer acquisitions" that went unreviewed.<sup>12</sup>

### **Key examples of transactions that evaded scrutiny under the old regime include:**

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<sup>10</sup> Baker McKenzie, *what do the Latest Amendments on Merger Control Mean for Dealmaking in India?* (18 November 2024) 1; Nishith Desai Associates, *Deal Breaker or Deal Maker? Deconstructing the "Deal Value Threshold"* (19 September 2024) 1.

<sup>11</sup> Nishith Desai Associates, *Deal Breaker or Deal Maker? Deconstructing the "Deal Value Threshold"* (19 September 2024) 2-4.

<sup>12</sup> Ministry of Corporate Affairs, *Report of the Competition Law Review Committee* (2019).

**Zomato's acquisition of Blinkit (2022):** Deal value  $\approx$  INR 3,485 crores. Structured as a share swap, it availed the de minimis exemption despite its substantial impact on the quick-commerce market.<sup>13</sup>

**Zomato's acquisition of Uber Eats (2020):** Approximate deal value USD 350 million. Again, benefited from the minimis exemption.<sup>14</sup>

**Facebook's acquisition of WhatsApp (2014):** Valued at approximately USD 19 billion. While reviewed in the EU and US, the CCI had no opportunity to assess its potential effects in India.<sup>15</sup>

**PVR-Inox Merger (2022):** A significant consolidation in the film exhibition industry that also availed the de minimis exemption due to pandemic-affected revenues.<sup>16</sup>

These transactions demonstrated that competitive significance is not always reflected in traditional financial indicators. In digital markets, factors such as user data, network effects, innovation potential, and market influence may be more relevant than assets or turnover in assessing competitive harm. The introduction of the Deal Value Threshold (DVT) under Section 5(d) addresses this gap by adding a "value of the transaction" test alongside the existing thresholds. This ensures that high-value deals, especially in tech, startup, and e-commerce sectors, are brought under regulatory oversight, thereby protecting competition while aligning Indian merger control with global best practices.<sup>17</sup>

#### 4. Legal Framework of the Deal Value Threshold

The Deal Value Threshold (DVT) has been introduced as an additional notifiability trigger under **Section 5(d)** of the Competition Act, 2002 (inserted by the Competition (Amendment) Act,

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<sup>13</sup> AZB & Partners, Deal Value Threshold (30 September 2024).

<sup>14</sup> Baker McKenzie, what do the Latest Amendments on Merger Control Mean for Dealmaking in India? (18 November 2024).

<sup>15</sup> Nishith Desai Associates, supra note 11.

<sup>16</sup> Ibid.

<sup>17</sup> Baker McKenzie, supra note 14.

2023). It operates in addition to the existing asset and turnover thresholds under Sections 5(a),

(b) and (c). The detailed mechanics are provided in the **CCI (Combinations) Regulations, 2024**, effective from 10 September 2024.<sup>18</sup>

A transaction is notifiable under the DVT if it satisfies both limbs of the framework. The framework therefore combines a transaction-value based threshold with a jurisdictional nexus requirement to ensure that only economically significant transactions affecting Indian markets are subject to CCI scrutiny.

#### **4.1 Value Test**

The “value of the transaction” must exceed **INR 2,000 crores** (approx. USD 238 million).<sup>19</sup>

The value includes **all forms of direct or indirect, immediate or deferred consideration** (cash or non-cash). Regulation 4(1) enumerates the following components:<sup>20</sup>

- Covenants, undertakings, obligations or restrictions (e.g., non-compete covenants);
- Consideration for interconnected steps and transactions (2-year look-back);
- Consideration payable within 2 years for arrangements incidental to the transaction (technology assistance, IP licensing, supply agreements, branding, mandatory follow-on investments, etc.);
- Value of call options assuming full exercise;
- Consideration based on future outcomes as per “best estimates”.

**Explanations (f), (g) & (h)** provide guidance on valuation:

The board of directors or approving authority must determine the value.

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<sup>18</sup> Nishith Desai Associates, Deal Breaker or Deal Maker? Deconstructing the “Deal Value Threshold” (19 September 2024) 2.

<sup>19</sup> Section 5(d), Competition Act, 2002.

<sup>20</sup> Regulation 4(1), CCI (Combinations) Regulations, 2024.

If reasonable certainty is not possible, the transaction is deemed to exceed the threshold (Explanation (g)).

“Best estimate” defaults to the maximum payable amount if not recorded.<sup>21</sup>

## 4.2 Business Test (Substantial Business Operations in India)

The target enterprise must have substantial business operations in India, satisfied if **any** of the following is met:

**User Test (Digital Services):**  $\geq 10\%$  of global business/end users are in India.

**GMV Test:** Gross Merchandise Value in India for the preceding 12 months is  $\geq 10\%$  of global GMV **and**  $> \text{INR } 500$  crores (not applicable to pure digital services).

**Turnover Test:** Turnover in India in the preceding financial year is  $\geq 10\%$  of global turnover **and**  $> \text{INR } 500$  crores (not applicable to pure digital services).<sup>22</sup>

**Note:** DVT overrides the de minimis exemption. Transactions meeting DVT can only avail exemptions under the Exemption Rules, 2024.<sup>23</sup>

## 4.3 Interaction with Existing Regime

Parties must check **both** the traditional thresholds **and** the DVT. Deal teams are advised to assess DVT first in high-value deals. The framework is particularly relevant for tech, startup, ecommerce, and digital transactions where valuation is driven by users, data, and growth potential rather than current assets/turnover.<sup>24</sup>

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<sup>21</sup> Ibid., Explanations (f)–(h).

<sup>22</sup> Regulation 4(2), CCI (Combinations) Regulations, 2024.

<sup>23</sup> Baker McKenzie, ‘What do the Latest Amendments on Merger Control Mean for Dealmaking in India?’ (18 November 2024).

<sup>24</sup> AZB & Partners, ‘Deal Value Threshold’ (30 September 2024).

## 5. Impact on Tech, Startup and E-commerce M&A

The introduction of the Deal Value Threshold (DVT) is expected to have the most profound impact on transactions in the technology, startup, and e-commerce sectors, where valuations are often driven by user base, data, network effects, and future growth potential rather than current assets or turnover.<sup>25</sup>

### Key Impacts:

**Increased Notification Requirement:** Many high value “killer acquisitions” and strategic investments that previously escaped scrutiny will now require mandatory CCI approval. Deals like Zomato-Blinkit and Zomato-Uber Eats would have been notifiable under the new regime.<sup>26</sup>

**Longer Deal Timelines and Higher Compliance Costs:** Parties will need to undertake detailed valuation exercises (including best estimates for options, earn-outs, and incidental arrangements) and Business Test calculations (User/GMV/Turnover tests).

This adds time and cost, particularly in cross-border transactions involving share swaps or complex structures.<sup>27</sup>

### Structuring Challenges:

Non-compete covenants, follow-on investments, IP licensing, and technology assistance agreements must now be carefully valued.

A 2-year look-back for interconnected transactions may aggregate previous investments.

Deal teams are advised to document valuations clearly to avoid gun-jumping risks and Explanation (g) deeming provisions.<sup>28</sup>

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<sup>25</sup> Nishith Desai Associates, ‘Deal Breaker or Deal Maker?’ (19 September 2024), pp. 12-15.

<sup>26</sup> AZB & Partners, ‘Deal Value Threshold’ (30 September 2024).

<sup>27</sup> Baker McKenzie, ‘What do the Latest Amendments on Merger Control Mean for Dealmaking in India?’ (18 November 2024).

<sup>28</sup> Nishith Desai Associates, *supra* note 1.

**Positive Effects on Competition:** The DVT enables the CCI to review transactions that could lead to market consolidation in digital markets, thereby protecting smaller players and maintaining competitive dynamics in fast-growing sectors.<sup>29</sup>

**Sector-Specific Relevance:** E-commerce and quick-commerce platforms, fintech, edtech, health tech, and social media companies with significant Indian user bases but relatively low turnover will be most affected. Foreign investors acquiring Indian startups with high valuations will also need to carefully assess DVT applicability.<sup>30</sup>

Overall, while the DVT strengthens the merger control regime, it introduces greater regulatory oversight and uncertainty in deal structuring for India's vibrant startup ecosystem.<sup>31</sup>

The introduction of the DVT therefore reflects a policy shift from a purely quantitative approach based on assets and turnover towards a qualitative assessment of competitive significance. While this enhances the CCI's ability to scrutinize acquisitions involving data-rich and innovation-driven enterprises, excessive notification requirements may increase transaction costs and discourage investment in early-stage ventures. Consequently, the long-term success of the DVT will depend upon the CCI adopting a balanced approach that safeguards competition without imposing disproportionate burdens on legitimate business transactions.

## 6. Comparative Analysis

India's Deal Value Threshold (DVT) aligns with global best practices while adapting to the Indian context. Several jurisdictions have already adopted transaction-value-based thresholds to address gaps in traditional asset/turnover tests, particularly in digital markets.

**Germany and Austria:** These were among the first to introduce transaction value thresholds (in 2017 and 2018 respectively). Germany's threshold is €500 million global

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<sup>29</sup> Ibid

<sup>30</sup> Ibid.

<sup>31</sup> Baker McKenzie, *supra* note 3.

transaction value with the target having significant domestic operations (e.g., €25 million turnover or specific user/activity thresholds in certain cases). The objective was similar — to catch “killer acquisitions” in tech where targets have low turnover but high strategic value. India’s DVT (INR 2,000 crores with Substantial Business Operations test) draws clear inspiration from this model.<sup>32</sup>

The experience of Germany and Austria demonstrates that transaction-value thresholds can effectively address enforcement gaps in digital markets, although they also create challenges relating to valuation certainty and increased notification burdens.

**United States:** The Hart-Scott-Rodino (HSR) Act employs a “size of transaction” test (currently USD 119.5 million as of 2024, adjusted annually) alongside size-of-person thresholds. This has effectively captured high-value tech deals. However, the US system includes extensive exemptions and filing tiers. India’s DVT is narrower in focus but broader in consideration inclusions (options, earn-outs, incidental arrangements).<sup>33</sup>

**European Union:** The EU primarily relies on turnover thresholds but has discussed and, in some Member States, implemented supplementary value-based tests. The European Commission’s review of digital markets has emphasized the need to look beyond turnover.<sup>34</sup>

### **Key Distinctions of Indian DVT:**

It is an **additional** (not alternative) threshold, meaning parties must check both traditional and DVT criteria.

Strong emphasis on **Substantial Business Operations in India** (User/GMV/Turnover Tests) to maintain a clear nexus with India. Broad definition of “value of transaction”

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<sup>32</sup> Nishith Desai Associates, ‘Deal Breaker or Deal Maker?’ (19 September 2024), pp. 2-3.

<sup>33</sup> Baker McKenzie, ‘What do the Latest Amendments on Merger Control Mean for Dealmaking in India?’ (18 November 2024).

<sup>34</sup> Ibid.

<sup>35</sup> AZB & Partners, ‘Deal Value Threshold’ (30 September 2024).

covering future payments, interconnected deals, and best estimates — making it one of the more comprehensive frameworks.<sup>35</sup> India's DVT reflects international best practices, its long-term success will depend upon consistent interpretation by the CCI and the development of clear guidance on transaction valuation and substantial business operations. As the regime matures, judicial and administrative precedents will play a crucial role in determining whether the DVT achieves its objective of preventing anti-competitive acquisitions without discouraging legitimate investment and innovation.

While the Indian DVT strengthens the regime, it is still in its infancy. Early CCI decisions and potential FAQs will determine whether it strikes the right balance between regulatory oversight and ease of doing business, especially when compared to more mature regimes in Germany and the US.<sup>36</sup>

## 7. Challenges and Criticisms

While the Deal Value Threshold (DVT) strengthens the merger control regime, it has attracted several criticisms and practical challenges:

**Valuation Uncertainty and Compliance Burden:** The broad definition of “value of the transaction” (including call options, earn-outs, incidental arrangements, and best estimates) creates significant uncertainty. Explanations (f), (g), and (h) place heavy responsibility on the board of directors or approving authority. If reasonable certainty cannot be achieved, the transaction is deemed to exceed the threshold, increasing the risk of gun-jumping penalties.<sup>37</sup>

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<sup>36</sup> Nishith Desai Associates, *supra* note 1.

<sup>37</sup> Nishith Desai Associates, ‘Deal Breaker or Deal Maker?’ (19 September 2024), pp. 8-11.

**Ambiguity in Business Test:** The User Test, GMV Test, and Turnover Test lack detailed guidance for hybrid (digital + non-digital) businesses. Calculating 10% thresholds for users or GMV across global operations can be complex and data intensive.<sup>38</sup>

**Increased Deal Timelines and Costs:** Additional due diligence on valuation, interconnected transactions (2-year look-back), and Business Test calculations may delay closings and raise transaction costs, particularly affecting startups and cross-border deals.<sup>39</sup>

**Potential Over-Notification:** The DVT may capture benign transactions with high valuations but limited competitive impact, leading to unnecessary regulatory burden on the CCI and parties.<sup>40</sup> Furthermore, a cautious approach by parties seeking to avoid regulatory penalties may encourage defensive filings, thereby increasing the CCI's caseload and potentially divert resources away from transactions that present genuine competition concerns.

**Impact on Startup Ecosystem:** Critics argue that heightened scrutiny could deter foreign investment and make India less attractive for early-stage funding, especially in tech and e-commerce.<sup>41</sup>

**Implementation Challenges:** Being a new framework, early enforcement may suffer from teething issues until the CCI issues clarifications or FAQs.<sup>42</sup>

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<sup>38</sup> Ibid.

<sup>39</sup> Baker McKenzie, 'What do the Latest Amendments on Merger Control Mean for Dealmaking in India?' (18 November 2024).

<sup>40</sup> AZB & Partners, 'Deal Value Threshold' (30 September 2024).

<sup>41</sup> Nishith Desai Associates, *supra* note 1.

<sup>42</sup> Ibid.

These challenges highlight the need for balanced implementation to avoid stifling innovation while protecting competition.

## **8. Recommendations**

To effectively navigate the new Deal Value Threshold (DVT) regime, the following recommendations are suggested for stakeholders:

### **For Deal Teams and Corporates:**

Conduct a DVT assessment at the term sheet stage itself, especially for high-value tech, startup, and e-commerce transactions.

Clearly document valuations of non-compete covenants, earn-outs, call options, and incidental arrangements in transaction documents to reduce uncertainty.

Maintain detailed records of Business Test calculations (User, GMV, and Turnover) with supporting data.<sup>43</sup>

**For the CCI:** Issue **detailed FAQs and guidelines** on valuation methodologies, hybrid business models, and practical application of the Business Test.

Adopt a **pragmatic and expedited review process** for non-problematic DVT cases to minimize delays.

Consider publishing anonymized case studies on early DVT notifications to build predictability.<sup>44</sup>

### **For Policymakers:**

Monitor the impact of DVT on foreign investment and startup funding flows over the next 12–18 months.

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<sup>43</sup> Nishith Desai Associates, Deal Breaker or Deal Maker? Deconstructing the “Deal Value Threshold” (19 September 2024) 8-11.

<sup>44</sup> Ibid.

Introduce safe harbor provisions or simplified filing for transactions below a certain additional threshold where competitive concerns are minimal.<sup>45</sup>

**For Legal Practitioners:**

Advise clients on restructuring strategies (e.g., separating incidental arrangements) while ensuring compliance.

Stay updated with CCI decisional practice as the regime evolves.<sup>46</sup>

Implementing these measures will help balance effective competition enforcement with the ease of doing business in India's dynamic M&A market. These recommendations seek to ensure that the DVT fulfils its intended objective of capturing competitively significant transactions in digital and innovation-driven markets without creating disproportionate compliance burdens for businesses and investors.

**9. Conclusion**

The introduction of the Deal Value Threshold (DVT) under Section 5(d) of the Competition Act, 2002 marks a significant modernization of India's merger control regime. By addressing the critical gaps in the traditional asset and turnover-based thresholds, the DVT ensures that high-value transactions — particularly in the tech, startup, and e-commerce sectors — no longer escape regulatory scrutiny merely due to low current turnover or assets.<sup>47</sup> Drawing inspiration from global regimes in Germany, Austria, and the United States, the DVT, together with the detailed framework provided in the CCI (Combinations) Regulations, 2024, strengthens the CCI's ability to prevent anti-competitive "killer acquisitions" while maintaining a clear nexus with India through the Substantial Business Operations test.<sup>48</sup>

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<sup>45</sup> Baker McKenzie, what do the Latest Amendments on Merger Control Mean for Dealmaking in India? (18 November 2024).

<sup>46</sup> AZB & Partners, Deal Value Threshold (30 September 2024).

<sup>47</sup> Nishith Desai Associates, Deal Breaker or Deal Maker? Deconstructing the "Deal Value Threshold" (19 September 2024) 16.

<sup>48</sup> Baker McKenzie, what do the Latest Amendments on Merger Control Mean for Dealmaking in India? (18 November 2024).

However, the success of this reform will depend on its practical implementation. Stakeholders must adapt to the enhanced compliance requirements, while the CCI is expected to provide timely clarifications to reduce uncertainty. If implemented thoughtfully, the DVT has the potential to become a balanced tool that fosters fair competition without unduly burdening legitimate business transactions.<sup>49</sup>

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<sup>49</sup> AZB & Partners, Deal Value Threshold (30 September 2024).