RETHINKING MERGER CONTROL IN INDIA: DEAL VALUE THRESHOLDS AS A SOLUTION TO KILLER ACQUISITIONS IN THE STARTUP ECONOMY

Vanshita Malhotra & Ananya Mittal, Jindal Global Law School

ABSTRACT

India's rapidly expanding startup and digital economy has exposed structural limitations in merger control under the Competition Act, 2002, which relies predominantly on asset- and turnover-based thresholds that often fail to capture high-value acquisitions of nascent firms whose competitive significance lies in future innovation potential, data, or network effects. This allows strategically important "killer acquisitions" to evade regulatory scrutiny despite their long-term impact on market contestability. Drawing on comparative experiences from Germany, Austria, the European Union, and OECD guidance on value-based jurisdictional triggers in innovation-driven markets, this paper examines whether the Competition (Amendment) Act, 2023's implementation of a deal value threshold, effectively addresses this enforcement gap. It argues that although the deal value threshold is an essential aspect of Indian competition law, the blind adoption of foreign models runs the risk of regulatory overreach and could discourage investment in a startup ecosystem where mergers and acquisitions continue to be the primary means of exit. In order to balance antitrust enforcement with innovation, investment, and economic growth, the paper proposes a balanced hybrid framework that includes procedural safeguards and a local nexus test.

INTRODUCTION

The emergence of the startup economy in India has completely changed the nature of the market operations and the companies that are based on innovation are already worth billions of dollars long before they earn substantial profits. It has brought in a veritable flood of international investment, it has also led to a resurgence in strategic acquisitions - particularly by large technology companies and platform companies that are keen to lock in their competitive advantage early. Such transactions, in which a major acquires a high-growth, low-revenue company to put potential competitors out of business, are commonly referred to as killer acquisitions. The examples of Facebook- Instagram and Google- Waze are considered classic cases that are able to reduce the level of competition in the long term and evade any antitrust control, as the rate of turnover during the time of acquisition is low.

Asset and turnover threshold notifications are the primary methods applied in India in its current merger-control regulations, administered by the Competition Act, 2002. This unwillingly excludes a vast number of digital and innovation transactions, where data, IP or user numbers are the true value, but not revenue. In response to this loophole, some places, such as Germany and Austria, and now the EU, have established deal-value ceilings to ensure that big-price, low-rev takeovers do not fall between the cracks.

As India now establishes its own deal-value standard under the Competition (Amendment) Act 2023, the question of policy emerges: Can competition law really prevent killer purchases without closing the way legitimate startups can exit and invest? I would say that, although a deal-value test is a necessity to make the competition law in India future-proof, wholesale copying of foreign examples would be counterproductive. India must adopt a middle way, hybrid approach that continues to promote competition but at the same time leads to more innovation.

The Problem: Why Traditional Merger Control Misses Killer Acquisitions

The Competition Act of 2002[1] served as the foundation for India's merger control framework, which primarily uses asset and turnover requirements to determine whether a deal needs to be notified to the Competition Commission of India (CCI). Although this model works effectively for established industries, it is ineffective in the rapidly evolving digital economy, where businesses may show modest current revenue but have significant disruptive potential. The

[1] Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).

2014 Facebook–WhatsApp transaction illustrates the weakness starkly. Facebook paid approximately USD 19 billion, which was later valued at over USD 21 billion, for a messaging service that had over 600 million active users but only generated about USD 20 million in annual revenue.[2] WhatsApp's turnover and assets in India were far below the statutory limits; therefore, the CCI never examined a deal that would have changed the global social media landscape. Similar outcomes have been observed in Indian markets.

Flipkart bought the e-commerce platform Myntra for approximately USD 300 million in 2014, while Myntra paid USD 70 million to acquire Jabong two years later.[3] Despite the comparatively low turnover reported by each target, Flipkart's grip on online retail was strengthened by the series of acquisitions. Likewise, Ola's USD 200 million acquisition of TaxiForSure in 2015, followed by the quiet retirement of the TaxiForSure brand,[4]reduced independent competition in the nascent ride-hailing sector. Each example shows how the present framework can fail to detect transactions that may weaken future market rivalry.

These Indian experiences echo a wider global concern about "killer acquisitions," where established players buy nascent rivals not to develop their innovations but to neutralise them. Cunningham, Ederer, and Ma's influential research in the pharmaceutical industry shows that incumbents often acquire smaller innovators only to discontinue competing drug projects, thereby preventing potential future threats.[5] The Organisation for Economic Co-operation and Development (OECD) has likewise warned that high-value, low-turnover acquisitions in technology and other innovation-intensive markets can escape regulatory review while inflicting long-term harm on competition. In this light, Facebook's purchase of WhatsApp is emblematic: a transaction of immense strategic significance, yet one that slipped beneath India's notification radar because the target's Indian revenue base was negligible. The pattern is clear rules tied solely to current assets and turnover leave regulators blind to deals whose competitive significance lies in future potential rather than present earnings.

Together, such instances reveal a structural enforcement gap. Undermining the contestability

[2] Parmy Olson, Facebook Closes $19 Billion WhatsApp Deal, FORBES (Oct. 6, 2014), https://www.forbes.com/sites/parmyolson/2014/10/06/facebook-closes-19-billion-whatsapp-deal/.
[3] Parmy Olson, Facebook Closes $19 Billion WhatsApp Deal, FORBES (Oct. 6, 2014), https://www.forbes.com/sites/parmyolson/2014/10/06/facebook-closes-19-billion-whatsapp-deal/.
[4] Sanjay Vijayakumar, Ola acquires TaxiForSure for $200 million, THE HINDU (Mar. 2, 2015, 4:57 PM), https://www.thehindu.com/business/Industry/ola-acquires-taxiforsure-for-200-million/article6951682.ece.
[5] Cunningham, Ederer & Ma, *Killer Acquisitions: Evidence from the Pharmaceutical Industry*, 133 J. POL. ECON. 1, 4, 5–10 (2021)

that competition law aims to preserve, harmful acquisitions that hamper potential competitors or consolidate market power may proceed unnoticed. Policymakers throughout the world have started to rethink the way transactions are screened after recognising this blind spot. A prominent reform now under discussion is the adoption of deal-value thresholds that trigger review whenever the purchase price itself signals strategic importance, even if the target's revenues remain small. These thresholds aim to precisely capture the high-value, low-turnover transactions that characterise many digital economies and innovation-driven markets. India is now in a position to examine whether its own merger-control system should go beyond traditional financial measures in order to safeguard competition in the markets of the future, given the expanding global discussion surrounding these mechanisms.

India's Unique Context — Startups, Innovation, and Enforcement Capacity

India's rapid evolution has established it as one of the world's most vibrant startup ecosystems in a remarkably brief period. At present, more than 114 unicorns are valued at over USD350 billion in total, as of 2024.[6] In contrast to more established businesses, in India, a startup knows how strong it becomes through network effects, data heaps, intellectual property and quick user adoption.[7] Due to this reason, many high-potential startups fail to meet the turnover/asset requirements in Sections 5 and 6 of the Competition Act 2002, despite having significant strategic importance.[8]

Personally, I think that the primary way for Indian startups is by selling. Research indicates that of all successful exits in the tech industry, more than 80 per cent occur through mergers or acquisitions, as opposed to an initial IPO.[9] When acquiring startups, incumbents usually do not only acquire them to integrate but also to neutralise disruptive competition or to acquire essential technology.[10] Two transactions actually demonstrate the loopholes in the merger-control regime of India. In 2020, Zomato acquired Uber Eats India, which linked the online food-delivery market and throw the scales to a large competitor, although the transaction was below the previous turnover requirement and would not have been scrutinized closely by CCI.[11] PhonePe bought Indus OS in 2022 cementing its position in the mobile-OS industry and

[6] Department for Promotion of Industry and Internal Trade, *Startup India Report 2023* (2023).
[7] NASSCOM, *Indian Startup Ecosystem Report 2022* 12–15 (2022).
[8] Competition Act, No. 12 of 2002, §§ 5–6 (India).
[9] Bain & Company, *India Venture Capital Report 2023* 14 (2023).
[10] Cunningham, Ederer & Ma, Killer Acquisitions: Evidence from the Pharmaceutical Industry, 133 J. POL. ECON. 1, 5–10 (2021).
[11] Zomato Media Pvt. Ltd./Uber Eats India, Combination Reg. No. C-2020/01/713 (CCI Jan. 20, 2020).

making the competition problematic, but it passed through the official examination due to low revenues at that moment.[12]

The regulatory environment of India is quirky. Competition Commission of India (CCI) in comparison to its counterparts in the EU or the US must simultaneously apply not only the rules of anticompetitive conduct control but also to the regulation of mergers, usually with reference to voluntary disclosures and self-evaluation of the parties.[13] Compared to having true real-time market information, algorithmic audits and industry-specific knowledge, the CCI finds it hard to detect agreements that may reduce appearing competition.[14] An un tailored blanket deal -value cap that does not take into account such restrictions may overburden the regulator and will work against enforcement effectiveness.

The government is simultaneously supportive of consolidation of important sectors. Programmes such as Startup India, Digital India and Make in India attract foreign investments and promote alliances of new start-ups with large existing companies.[15] Acquisitions made by large corporations have generally been viewed as due diligence of economic maturity whereby a policy tug-of war exists between preserving competition and encouraging entrepreneurial development.

Therefore, the acceleration of accumulation of innovation segments and the insufficient capacity to enforce them implies that any threshold of deal-value must be highly tuned. It ought to employ domestic nexus examinations- consider the quantity of Indian users, vital information resources or technology implementations. Proposed safe-harbour policies in the case of early stage acquire-houses or tech-based buyouts by non-dominant participants may prevent the inhibition of investment without making the regulator concentrate on strategic deals.[16] That structure would allow the merger-control regulator in India to compete in the new markets rather than stifling innovation or locking out the avenues of viable exit.

Global Experiments with Deal Value Thresholds

Germany and Austria were the first EU members to plug the “killer acquisition” gap by introducing deal-value thresholds in 2017. Their approach supplements traditional turnover

[12] PhonePe Private Ltd./Indus OS, Combination Reg. No. C-2022/08/1053 (CCI Aug. 15, 2022).
[13] OECD, *Peer Review of Competition Law and Policy: India* 42–45 (2021).
[14] Competition Law Review Comm., *Report on Competition Law Review* ¶¶ 3.12–3.15 (2019).
[15] Ministry of Com. & Indus., *Economic Survey 2022: Digital & Platform Economy Chapter* 102–105 (2022).
[16] Id.

tests with an additional trigger based on the price of the transaction. In Germany, a merger must be notified if it satisfies three conditions: combined worldwide turnover above €500 million, domestic turnover of at least one party above €25 million, and a deal value exceeding €400 million, provided the target has significant domestic operations. Austria follows a parallel model with a €300 million worldwide turnover floor, €15 million domestic turnover requirement, and a €200 million transaction-value threshold.[17] Detailed joint guidance explains how to calculate the "value of consideration," counting cash, assumed liabilities, share swaps, and earn-outs, and how to assess "significant domestic activities," using indicators such as active user numbers, local R&D, or early-stage commercialisation. This framework ensures that acquisitions of innovative firms with limited revenue but high strategic importance cannot escape scrutiny merely because they fall below traditional turnover limits.

The European Union itself chose a different route. Rather than fix a single transaction-value trigger across all Member States, the Commission strengthened its Article 22 referral mechanism so national authorities can ask Brussels to examine deals that threaten competition even if they are below national thresholds. This has enabled review of transactions where the target's turnover is not a good proxy for its market power, such as start-ups with valuable intellectual property or data assets. The EU's Digital Markets Act now adds a duty for designated "gatekeepers" to inform the Commission of all intended digital-sector acquisitions, again reflecting the view that the price paid often signals competitive potential better than present revenues. The OECD has endorsed these flexible jurisdictional triggers, warning that innovation-driven markets, digital platforms, pharmaceuticals, and biotech are especially prone to high-value, low-turnover acquisitions that can eliminate future competition.[18] In the United States, the Federal Trade Commission and Department of Justice have likewise increased scrutiny of "nascent competition," investigating numerous consummated but non-notifiable deals between 2015 and 2020 to prevent incumbents from quietly absorbing emerging rivals.

For India, these global experiments are directly relevant. The Competition (Amendment) Bill, 2022, proposes a new filing requirement for combinations where the deal value exceeds ₹2,000

[17] Heinrich Kuhnert, Joint Guidance on Transaction-Value Thresholds, 2 EUR. COMPETITION & REG. L. REV. 216 (2018).
[18] Anupam Sanghi & Sakshi Saran Agarwal, Assessing M&As Based on the New Deal Value Threshold—A Comparative Analysis, 7 IND. COMPET. L. REV. 41 (2022).

crore and the target has "substantial business operations" in India.[19] This mirrors the German–Austrian model by coupling a monetary trigger with a local-nexus test and aims to capture digital and innovation-driven acquisitions that currently evade review under asset- or turnover-based thresholds. The merits are evident: it closes the enforcement gap exposed by transactions like Facebook-WhatsApp without burdening every start-up investment, because only deals of significant value and with real Indian operations would qualify. Yet the international record also counsels caution. Experience in Europe shows that setting the threshold too low risks sweeping in a flood of benign filings, while setting it too high misses problematic mergers.[20] To avoid uncertainty, it is necessary to provide clear guidance on complex issues such as how to handle contingent payments, fluctuating share prices, or assumed liabilities, even when the value has been properly chosen. Thus, even if the proposed Indian model reflects a global shift towards value-based jurisdiction, its effectiveness will depend on transparent valuation rules, calibrated thresholds, and the Competition Commission of India's capacity to manage an extensive caseload without compromising thorough analysis. Whether India should adopt deal-value screening is no longer the question; rather, it is how exactly to implement it in a way that captures truly strategic transactions without overwhelming the regulator or discouraging investment.

Critical Analysis — Designing an Indian Deal Value Threshold

Introduction of a deal value threshold (DVT) in India is essentially a large leap in the direction of merger control, which attempts to address the blindness of the old turnover-based and asset-based thresholds. In Germany, Austria and the EU, the thresholds have served to identify acquisitions of could-be-big competitors, but directly copying-pasting them into India risks catching too many deals (over-inclusion), and not catching others actually harming competition (under-inclusion), particularly in rapidly changing technological industries where crazy new business models exist.

One of the issues with a strict DVT is that it may indicate too many deals -over-inclusiveness. Major acquisitions of high-value startups that hardly gain market share in India, or acqui-hires primarily aimed at poaching talent rather than eliminating a competitor, may lead to

[19] Utkarsh Sahu, Revaluing Transactions: Navigating the Competition law Terrain with Deal Value Threshold, MANUPATRA (Mar. 15, 2024), https://articles.manupatra.com/article-details/Revaluing-Transactions-Navigating-the-Competition-law-Terrain-with-Deal-Value-Threshold.

[20] Ayush Raj, *Merger Control & Competition (Amendment) Act, 2023: Analysing the Amendment & Advancing Post-Amendment Considerations for the Commission for an Immaculate Combination Regime*, 13 NLIU L. REV. 16 (2024).]

compulsory considerations that slow down firms from considering investing in the startup scene. This may reduce much of the cool and strategic action that keeps the dynamic ecosystem of India alive, on the one hand, but on the other, the DVT may start to miss an ensemble of low buys, minority interests or staggered deals which can collectively cut competition in a sector,

An Indian DVT that has been thought through needs to combine numbers and context. The first would be a local nexus test at the table: it would have to show that the acquisitions are of a solid user base, critical data assets or tech used in India before it becomes subject to scrutiny, which would prevent unjustifiable red tape, allowing startups to exit and venture capital to flow.

Faster-track review mechanism is also a necessity in a procedural way. The CCI lacks resources and so a multi-level system can be intelligent to clear low-risk transactions and flag high-impact, market-concentrating transactions to go deep. This concept is consistent with international best practice, such as that of the Bundeskartellamt in Germany and the EU Commission in emphasising market value, rather than the value of a transaction.

The hybrid structure also allows the CCI to put a tracking on it once it has been notified of it, to trace trifles, but you can trace them, small partial acquisitions, and how they build up with time. In this way, you imitate the EU portfolio review model, which considers serial purchases by a single dominant platform as a bloc, and not individually as in India, this flexibility can allow enforcement to adapt to the market, particularly in the digital platforms, fintech and edtech.

Finally, a DVT in India needs to narrow down on deals that indeed pose a threat to new competition and at the same time keep the incentive to innovate and investment flow intact. Combining deal value thresholds, a local nexus test, serial-acquisition triggers, and safe harbour rules will mean that India has created a merger-control regime that is not only future-friendly but also commensurate with the fast-growing start-up ecosystem in the country.

Conclusion

India’s move toward a deal-value threshold (DVT) is a necessary evolution of its merger-control regime. Asset- and turnover-based triggers under the Competition Act, 2002 have repeatedly failed to capture acquisitions where the real worth lies in data, intellectual property, or network effects rather than present revenue. Lessons from Germany and Austria’s price-plus-nexus model, the EU’s Article 22 referral mechanism, and OECD guidance demonstrate

that value-based screening can bring strategically significant, low-turnover transactions within regulatory reach. Yet these same jurisdictions caution that thresholds set too low can overwhelm agencies with benign filings, while thresholds set too high risk missing the very "killer acquisitions" they are meant to prevent.

The ₹2,000 crore trigger proposed in the Competition (Amendment) Act 2023, tied to a "substantial business operations in India" test, offers a balanced starting point. However, the effectiveness of it will depend on robust criteria for establishing local nexus, clear valuation rules for contingent payments and share swaps, and procedural tools such as fast track review of low-risk cases. Further safeguarding India's vibrant start-up ecosystem from unnecessary compliance burdens can be achieved by implementing a safe harbour for early-stage acquisitions and portfolio-acquisition tracking. India can bridge the enforcement gap against killer acquisitions while maintaining the incentives for investment and innovation that drive its digital economy by incorporating global best practices into its own domestic setting.