PRICED TO AVOID SCRUTINY: KILLER ACQUISITIONS AND THE LIMITS OF INDIA'S DEAL VALUE THRESHOLD

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ABSTRACT

India's merger control architecture underwent a significant recalibration in 2023. The Competition (Amendment) Act introduced a transaction-value based trigger for acquisitions exceeding Rs. 2,000 crore now require CCI clearance irrespective of whether the target generates any domestic revenue. The amendment was widely celebrated as India's answer to killer acquisitions - the practice by which dominant digital platforms acquire nascent startups primarily to neutralise competitive threats. This article argues that such celebration is premature. The Rs. 2,000 crore threshold is structurally miscalibrated the most dangerous killer acquisitions in India's startup ecosystem typically occur at sub-threshold valuations, involving pre-revenue competitors whose disruptive potential far outweighs their transaction value. Further, the withdrawal of the Digital Competition Bill, 2024 in August 2025 has left a doctrinal vacuum that the amended Competition Act, 2002 cannot adequately fill on its own. Rather than advocating for a resurrection of the standalone Digital Competition Bill or accepting the deal value threshold as sufficient, this article proposes a third way i.e., the introduction of a "nascent competitor doctrine" within the CCI's substantive merger review framework, adapted from the European Court of Justice's *Towercast* judgment and the United States Federal Trade Commission's evolving approach to potential competition. This doctrinal shift focused on the quality of competitive review rather than the trigger for notification, offers India a proportionate, innovation-sensitive, and legally grounded path forward.

Keywords: Killer Acquisitions, Deal Value Threshold, Competition (Amendment) Act 2023, Nascent Competitor Doctrine, Digital Competition Bill, CCI Merger Review, Towercast, Startup Ecosystem.

INTRODUCTION

In 2012, Facebook acquired Instagram for approximately $1 billion. Despite generating negligible revenue at the time of acquisition, Instagram had already amassed approximately fifty-five million users and demonstrated significant growth potential as a direct competitor to Facebook's photo-sharing functionality. The transaction received limited regulatory scrutiny, and the rest is market history.[1]

The lesson that competition lawyers have spent a decade processing is deceptively simple: in digital markets, value precedes revenue. A startup's competitive significance is not adequately captured by its balance sheet. It is captured by its user base, its data assets, its trajectory of growth, and most critically, the existential threat it poses to an incumbent's core business model. When an incumbent acquires such a startup, it may not be seeking technology or talent. It may be buying silence.

This is the phenomenon that academics and regulators now call the "killer acquisition" - a transaction where a dominant firm acquires a nascent competitor specifically to shut it down or to absorb it in ways that prevent it from maturing into a genuine competitive threat.[2] India's competition law framework has historically been poorly equipped to handle this problem. The jurisdictional thresholds under Section 5 of the Competition Act, 2002 were calibrated for brick-and-mortar market structures and are poorly suited to the economics of digital platforms.

The Competition (Amendment) Act, 2023 attempted to fix this with a single new provision - a Deal Value Threshold ("DVT") of Rs. 2,000 Crore. The intent was clear, and the direction was right. But the calibration leaves an enormous blind spot in India's merger control architecture, one that the withdrawal of the Digital Competition Bill, 2024 ("DCB") has made significantly wider.

I. THE DEAL VALUE THRESHOLD: A STEP FORWARD, BUT FOR WHOM?

What the Amendment Does

The Competition (Amendment) Act, 2023 amended Section 5 of the Competition Act, 2002[3]

[1] Cecilia Kang & Sheera Frenkel, *Facebook Agrees to Buy Instagram for $1 Billion*, N.Y. TIMES (Apr. 9, 2012).
[2] Colleen Cunningham, Florian Ederer & Song Ma, *Killer Acquisitions*, 129 J. POL. ECON. 649 (2021).
[3] Competition (Amendment) Act, 2023, § 6 (amending § 5(d) of the Competition Act, 2002).

to introduce a fourth limb of mandatory notification. Under this provision, any transaction in which the deal value exceeds Rs. 2,000 Crore is notifiable to the CCI, provided the target has "substantial business operations in India" - a term subsequently operationalised through the CCI (Combinations) Regulations, 2024.[4] The Regulations clarify that, in the digital sector, substantial business operations may be demonstrated if at least ten percent of the entity's global users or business users are located in India.[5]

The amendment was explicitly designed to close the gap exploited by platform-driven acquisitions i.e., acquisitions of user-rich, asset-light startups that generated no trigger under the existing turnover-based thresholds.[6] The inspiration was Germany and Austria, which had introduced comparable deal value thresholds years earlier in response to the same structural problem.[7]

The Structural Miscalibration

The DVT is, at its core, a notification tool. It determines who must knock on the CCI's door, not what the CCI does once the door opens. This distinction is more important than it might initially appear.

The more fundamental problem with the DVT, however, lies in its threshold itself. Rs. 2,000 crore (approximately $238 million) is a significant number in the Indian startup ecosystem. Many seed-stage and Series A startups that represent genuine nascent threats to platform incumbents are acquired at valuations well below Rs. 500 crore, often structured as acqui-hires or technology buyouts. These transactions are explicitly designed to be sub-threshold and are priced to avoid scrutiny, not reflect strategic value.[8]

The inadequacy of purely threshold-based merger control in digital markets is not merely theoretical; it has already manifested in Indian practice. A prime example of this regulatory blind spot was Zomato's early 2020 buyout of Uber Eats' domestic business. Despite being an

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[4] Competition Commission of India (Combinations) Regulations, 2024, Reg. 4.
[5] *Id.*, Reg. 4(3)(b).
[6] *Key Features: India Passes Competition (Amendment) Bill, 2023*, MEDIANAMA (Apr 4, 2023), https://www.medianama.com/2023/04/223-key-features-competition-amendment-bill-2023/.
[7] Act Against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen), § 35(1a) (Ger.) (2017 amendment introducing the €400 million deal value threshold in Germany).
[8] Nischal Anand & Kartik Tyagi, *Deal Value Thresholds Under the Competition (Amendment) Act, 2023: A Balanced Approach to Killer Acquisitions*, CBFL NLUD (July 8, 2024), https://www.cbflnludelhi.in/post/deal-value-thresholds-under-the-competition-amendment-act-2023-a-balanced-approach-to-killer-acq (noting a 71% drop in deal value from 2023 in the Indian startup ecosystem).

approximately USD 154 million stock-based consolidation between major food-delivery players, the combination slipped past the legacy asset and turnover tests established by Section 6 of the Competition Act. To be sure, Uber Eats India was widely perceived at the time as a struggling corporate asset rather than a classic, high-growth nascent startup. However, its acquisition effectively concentrated market power and eliminated a well-funded, structurally viable third pillar in a highly concentrated duopoly. When the CCI subsequently served Zomato with a notice under Regulation 48 of the General Regulations in December 2020, questioning its non-filing - its instinctive reach to scrutinize this platform consolidation was precisely right. The law, however, lacked the forward-looking analytic tools to address the transaction. A formalized nascent competitor framework would have supplied those tools expressly, allowing the CCI to look past current financial distress and focus instead on the structural elimination of future competitive trajectories.

To illustrate the gap that persists even post-amendment, consider a stylised hypothetical: a dominant digital payments platform acquires a small UPI-based competitor at a Rs. 400 crore valuation. The target has two million active users, proprietary technology for offline payments, and a product roadmap that directly threatens the incumbent's core business. The transaction value is one-fifth of the DVT; however, the CCI never reviews it. The competitor is quietly wound down within eighteen months.

This is precisely the category of transaction - the pre-revenue, high-trajectory, low-valuation acquisition that the academic literature identifies as the most competitively harmful class of killer acquisitions. And it is precisely the category that the DVT misses.

The Burden of Proof Gap

A secondary but significant limitation of the 2023 Amendment is that it does not alter the substantive standard of review for notified transactions. Critically, the 2023 Amendment leaves the evidentiary burden untouched. A dominant acquirer of a nascent startup faces no adverse presumption, and the CCI must still affirmatively establish the likelihood of appreciable harm which is an onerous standard when the target has no revenue history against which to benchmark competitive effects.[9] The CCI must still demonstrate, under Section 6 of the

[9] Nischal Anand & Kartik Tyagi, *Deal Value Thresholds Under The Competition (Amendment) Act, 2023: A Balanced Approach to Killer Acquisitions*, CBFL NLUD (July 8, 2024), https://www.cbflnludelhi.in/post/deal-value-thresholds-under-the-competition-amendment-act-2023-a-balanced-approach-to-killer-acq.

Competition Act, that the combination is likely to cause an appreciable adverse effect on competition.

II. THE DCB IMPASSE: A DOCTRINAL VACUUM WITH CONSEQUENCES

What Indian Jurisprudence Already Reveals

Before examining the DCB and its withdrawal, it is instructive to consider what existing CCI enforcement has already exposed about the limitations of India's current framework. In In re: WhatsApp LLC (2021), the CCI took suo motu cognisance of WhatsApp's updated privacy policy, which mandated data sharing with Meta's platforms.[10] The investigation ultimately resulted in a penalty order in November 2024, in which the CCI held that WhatsApp had abused its dominant position under Section 4(2)(a)(i) of the Competition Act.[11] What is significant for present purposes is not the penalty itself, but what the case revealed, that the original Facebook/WhatsApp acquisition in 2014 valued at $19 billion, concentrated data assets in ways that were not fully assessed at the time of the combination. The CCI's merger review of that transaction under the then-existing thresholds did not engage with the competitive implications of cross-platform data integration, because the framework did not require it to.[12] A nascent competitor doctrine, applied prospectively, would require precisely this engagement.

What the DCB Sought to Do

In February 2024, the Committee on Digital Competition Law ("CDCL") submitted its report alongside the draft Digital Competition Bill.[13] The DCB proposed ex-ante regulation for entities designated as Systemically Significant Digital Enterprises ("SSDEs"), calibrated on a composite of turnover, gross merchandise value, market capitalisation, and user base. For the purposes of merger control, the DCB's most relevant proposal was the empowerment of the

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[10] Competition Commission of India, *In re: Updated Terms of Service and Privacy Policy for WhatsApp Users*, Case No. 01 of 2021, Order under Section 26(1) (Mar. 24, 2021) (India).

[11] Competition Commission of India, Penalty Order against WhatsApp LLC and Meta Platforms, Inc., Case No. 01 of 2021 (Nov. 2024) (India); *see also* Aditya Bhardwaj & Rinki Singh, *Unpacking CCI's Antitrust Order Against WhatsApp and Meta*, LEXOLOGY (Dec. 2024), https://www.lexology.com/library/detail.aspx?g=a733ad59-74c3-486c-b720-d88628537c20.

[12] *See* Competition Commission of India, *In re:* Combination Registration No. C-2016/02/391 (Facebook/WhatsApp Combination) (2016) (India) (approving the combination; the review was conducted under the turnover and asset thresholds then in force and did not engage substantively with competitive implications of cross-platform data integration).

[13] Committee on Digital Competition Law, *Report of the Committee on Digital Competition Law*, Ministry of Corporate Affairs, Government of India (Feb. 2024).

CCI to proactively intervene before harm materialised, a structural departure from the current ex-post orientation of the Competition Act.

Why the Parliamentary Pushback Occured and Why the Concerns Were Legitimate

The Standing Committee on Finance, in its 25th Report (issued August 2025), did not outright bin the DCB; rather, it issued a significant parliamentary pushback, recommending a phased, evidence-led, and heavily modified rollout. The Committee effectively sent the Ministry of Corporate Affairs back to the drawing board to prevent prohibitive compliance costs and severe regulatory overlaps with the Digital Personal Data Protection Act, 2023.[14] The Committee's principal concerns were that the Bill's broad scope and rigid ex-ante obligations could burden digital platforms disproportionately, stifle innovation, deter foreign investment, and impose prohibitive compliance costs on startups and MSMEs.[15] The proposed SSDE designation lacked calibrated thresholds suited to India's diverse market structure, and significant sectoral overlaps with the IT Act, the Digital Personal Data Protection Act, 2023, and consumer protection law risked jurisdictional conflict.[16]

These were not frivolous concerns. The European experience with the DMA has already demonstrated that ex-ante regulatory frameworks impose significant structural costs on gatekeeper platforms, these are costs which, in a developing economy context, carry different risk-reward profiles. India's startup ecosystem is still in a funding winter, with deal values having fallen significantly from their 2021 peaks. Over-regulating the acquisition pathway even for anti-competitive purposes, carries the risk of impairing exit optionality for Indian founders, drying up acquisition-backed investment incentives, and reducing the strategic value of Indian startups in the eyes of foreign investors.

What the Withdrawal Left Behind

This legislative pause, while pragmatically sound to protect exit optionality in a startup funding

[14] Standing Committee on Finance, *25th Report: Digital Competition Bill, 2024*, Lok Sabha Secretariat (Aug. 2025).
[15] *Why India Withdrew the Digital Competition Bill 2024*, MEDIANAMA (Aug. 16, 2025), https://www.medianama.com/2025/08/223-india-digital-competition-bill-2024-withdrawal/.
[16] *Assessing the Nine Anticompetitive Practices Under the Draft Digital Competition Bill*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Aug. 2025), https://carnegieendowment.org/research/2025/08/assessing-the-nine-anticompetitive-practices-under-the-draft-digital-competition-bill.

winter, has nonetheless created a prolonged impasse. It has left two specific regulatory gaps.

First, there is no ex-ante framework that captures the conduct of dominant digital platforms before the harm materialises. The Competition Act, 2002 is fundamentally reactive and it waits for the appreciable adverse effect to be demonstrated, or for the notified transaction to cross a financial threshold, before engaging. For markets that move as fast as digital ones, this is structurally inadequate.

Second, and more relevantly, there is no articulated standard within the CCI's merger review framework for assessing the competitive significance of a nascent competitor that falls below the DVT. The CCI has market study powers, but no substantive doctrine and no analytic framework that instructs it how to evaluate the competitive trajectory of a startup rather than merely its current financial position.

III. THE NASCENT COMPETITOR DOCTRINE: BORROWING WISELY FROM ABROAD

The Towercast Framework

In March 2023, the European Court of Justice issued a preliminary ruling in *Case C-449/21, Towercast v. Autorité de la concurrence*[17], which has significant relevance to the doctrinal gap identified above. The facts were straightforward - TDF, the dominant French terrestrial broadcasting company, had acquired Itas, its only remaining competitor. The transaction fell below both national and EU merger control thresholds and was therefore not notified. Towercast, the complainant, argued that the acquisition nonetheless constituted an abuse of dominance under Article 102 TFEU by significantly entrenching TDF's market position.

The ECJ's ruling established that a concentration which escapes mandatory notification does not thereby escape competition law scrutiny altogether; a dominant acquirer remains exposed to ex-post review under national abuse of dominance provisions. It bears noting that Article 102 TFEU and Section 4 of the Competition Act, 2002 are structurally analogous, both prohibit abuse of a dominant position and have been interpreted to cover exclusionary conduct, though Section 4 does not contain the precise contours of Article 102 and any transplantation of the

[17] Case C-449/21, Towercast SASU v. Autorité de la concurrence, ECLI:EU:C:2023:207 (Mar. 16, 2023).

Towercast logic into Indian law would require purposive judicial or legislative engagement.[18] Subsequent developments have been significant as is seen in 2024, where the Belgian competition authority relied on *Towercast* to force Proximus to divest a below-threshold acquisition, and in 2025, the French Competition Authority sanctioned a "killer acquisition" as an abuse of dominance where the acquired transaction in that case, Doctolib's purchase of MonDocteur, dated back to 2018.[19]

What makes *Towercast* doctrinally significant is not its outcome but its methodology: it relocates the question from the notification gateway to the substantive assessment of competitive harm. Even where a transaction is not notifiable, a dominant acquirer may still face scrutiny for the competitive effect of that acquisition. The relevant question is not, "does this deal cross a threshold?" but "does this deal, by a dominant firm, entrench dominance in a way that forecloses nascent competition?"

The US Approach to Nascent Competition

The United States Federal Trade Commission (FTC) has, in recent years, articulated a parallel doctrine in the context of pharmaceutical "killer acquisitions." The FTC's approach is to enquire whether the acquired firm was a potential competitor whose acquisition eliminated a probable future threat to the acquirer's market position.[20] This is a probabilistic, trajectory-based inquiry rather than a financial snapshot and deals with the question of what the startup would have become had it not become acquired.

The analytic approach is not uniformly accepted in American jurisprudence, but it has influenced agency enforcement posture and academic thinking on how merger review should handle innovation-market competition. The key contribution is methodological and it shifts the baseline question from "what is the target worth today?" to "what competitive space does the target threaten to occupy?"

[18] Competition Act, 2002, § 4 (India). *Cf.* Treaty on the Functioning of the European Union, art. 102. While both provisions prohibit abuse of a dominant position, Section 4 of the Competition Act has been interpreted by the CCI and NCLAT in the context of Indian market conditions; any application of the *Towercast* reasoning to sub-threshold acquisitions under Section 4 would require either a legislative amendment or a purposive judicial interpretation by the NCLAT or the Supreme Court.

[19] *French Competition Authority Sanctions a "Killer Acquisition" as an Abuse of a Dominant Position*, O'MELVENY (Nov. 10, 2025), https://www.omm.com/insights/alerts-publications/french-competition-authority-sanctions-a-killer-acquisition-as-an-abuse-of-a-dominant-position/.

[20] Cunningham, Ederer & Ma, *supra* note 2, at 649-702.

A Proposed Indian Nascent Competitor Doctrine

The article proposes that the framework of Competition Law in India needs a "nascent competitor doctrine" embedded in the CCI's substantive merger review, which is a standard that can operate both within and beyond the DVT trigger.

The doctrine would have three operative elements:

i. First, where a notified transaction involves a dominant acquirer and a target with demonstrated competitive proximity to the acquirer's core market (even if the target has no revenue), the CCI should apply a heightened review standard. The burden of demonstrating absence of competitive harm should shift to the parties.

ii. Second, for non-notifiable acquisitions by dominant firms i.e., transactions that fall below the DVT or the turnover/asset thresholds, the CCI should be empowered, through a specific amendment to Section 26 or Section 33 of the Competition Act, to conduct ex-post review of the transaction under Section 4 of the Act (abuse of dominant position), which draws directly from the *Towercast* approach. This requires no new legislation but rather only a purposive interpretation of Section 4 that the CCI has not yet adopted, and an explicit amendment to the combinations regulations to clarify the CCI's post-closing review powers.

iii. Third, the CCI's Combination Regulations, 2024 should be amended to require parties to voluntarily disclose, in all filings, whether the target is a competitive adjacency which is basically a company whose product roadmap, user base, or technology overlaps with the acquirer's core digital services, regardless of whether the target currently competes in the same market. This disclosure obligation addresses the evidentiary problem and it creates a paper trail for transactions that might otherwise be designed to stay below the regulatory radar.

It is important to acknowledge the force of countervailing arguments. Critics may contend that expanding post-closing review of below-threshold transactions would create unacceptable uncertainty for investors and meaningfully reduce exit optionality for Indian startups, an outcome that could deter early-stage investment in precisely the sectors that competition law is trying to protect. These concerns deserve serious weight, particularly in a market where acquisition exits remain an important source of founder liquidity. However, the proposed doctrine is deliberately constrained: it is limited to acquisitions by firms that are already dominant, involves a target with demonstrable competitive proximity to the acquirer's core market, and would not impose any new notification obligations on non-dominant acquirers. This architecture limits regulatory overreach while addressing the core problem. The doctrine is not a prohibition on acquisitions, it is a standard of scrutiny for a narrow and identifiable category of transactions.

CONCLUSION

The Competition (Amendment) Act, 2023 was a welcome and overdue step. The Deal Value Threshold (DVT) meaningfully expanded the CCI's notification net, and the Combinations Regulations, 2024 operationalised it thoughtfully. But a notification tool without a sharpened substantive standard is like a wider gate without a competent gatekeeper.

The withdrawal of the Digital Competition Bill, 2024 has closed one avenue for reform. It has not, however, eliminated the underlying problem. India's digital economy is generating a new generation of startups in fintech, healthtech, edtech, and deep-tech - companies that represent genuine competitive threats to dominant platforms, and that are vulnerable to below-threshold acquisitions precisely because their value lies in their trajectory, not their balance sheets.

The reform India needs is not legislative in character, it is interpretive. The CCI already has the statutory foundations; what it lacks is the doctrinal vocabulary to deploy them against the right category of transactions. A nascent competitor doctrine, grounded in Section 4 of the Competition Act, drawn by *Towercast*, and supported by targeted disclosure obligations would give the CCI the analytic vocabulary it currently lacks. It would allow India to protect competitive markets without the overreach that killed the Digital Competition Bill, 2024 and without leaving the most dangerous killer acquisitions invisible to the regulatory apparatus.

The Rs. 2,000 Crore threshold was designed to catch what the old law missed. The question this article poses and leaves the CCI to answer is about who catches what the Rs. 2,000 crore threshold misses.