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INDIA'S COMPETITION AMENDMENT: WHY THE DEAL VALUE THRESHOLD CREATES ENFORCEMENT CHAOS

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ABSTRACT

India's Competition (Amendment) Act 2023 introduced a transformative deal value threshold (DVT) mechanism effective from September 10, 2024, requiring the approval of the Competition Commission of India (CCI) for transactions exceeding INR 2,000 crore where the target possesses "substantial business operations" in India. This doctrinal analysis examines three central tensions in the DVT framework: (1) the absence of definitional clarity regarding "substantial business operations", (2) the allocation of institutional capacity between merger control and substantive competition law, and (3) the framework's interaction with existing safe harbour provisions. By examining the legislative background, lessons from the European Union and United States, and the practical challenges likely to arise during enforcement, this paper contends that the success of the Deal Value Threshold (DVT) framework will largely depend on the Competition Commission of India issuing clear and authoritative guidance on what constitutes "substantial business operations," supported by measurable criteria and defined thresholds. Without such clarity, the framework risks creating regulatory arbitrage for acquisitions structured across multiple jurisdictions. The paper concludes with policy recommendations for enhanced regulatory rulemaking to operationalize the DVT framework.

Keywords*:* Deal value threshold, merger control, digital acquisitions, substantial business operations, killer acquisitions, Competition Commission of India

INTRODUCTION

On September 10, 2024, India's Competition Commission implemented the Deal Value Threshold (DVT) provisions of the Competition (Amendment) Act 2023, marking the most significant transformation of Indian merger control since the Competition Act 2002.[1] The DVT mechanism requires a mandatory CCI approval for acquisitions, mergers, and amalgamations where, the transaction value exceeds INR 2,000 crore (approximately USD 240 million at current exchange rates);[2] and the target enterprise possesses "substantial business operations" in India.[3]

This reform addresses a demonstrable regulatory gap. Under the previous regime, which relied exclusively on asset-based and turnover-based thresholds, digital platform companies with substantial market influence but minimal reported revenue could evade the CCI scrutiny. The Competition (Amendment) Act 2023 acknowledged this gap explicitly, noting in its legislative materials that companies operating in the digital economy often exercise considerable market power despite reporting low asset bases and turnover figures.[4]

The practical implications are substantial. Prior to September 10, 2024, transactions such as major acquisitions of data-rich technology startups, which might generate thousands of crores in deal value

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[1] Ministry of Corporate Affairs, Government of India, 'Competition (Amendment) Act 2023, introducing the Deal Value Threshold (DVT) in merger control' Notification No S.O. 3456(E) (10 September 2024) <https://www.mca.gov.in> accessed 2 May 2026.

[2] Competition Commission of India, *Competition Commission of India (Combinations) Regulations 2024*, reg 3.

[3] Ibid. The phrase "substantial business operations" appears in Regulation 3 but receives no further definition in the Regulations document itself.

[4] 'The Competition (Amendment) Act 2023: Legal Impact on Mergers, Market Conduct and Indian Enterprises' (*The Attorneys*, 24 May 2025) <https://theattorneys.co/the-competition-amendment-act-2023-legal-impact-on-mergers-market-conduct-and-indian-enterprises> accessed 4 May 2026.

despite reported revenue of only a few hundred crores, could benefit from the de minimis exemption under Section 5(a) of the Competition Act 2002.[5] The DVT mechanism eliminates this exemption category for high-value transactions, mandatory extending CCI jurisdiction to deal-value-driven acquisitions regardless of target turnover or asset base.[6] This was the legislative intent. However, it raises enforcement questions addressed in Part III.

The statutory text embeds a critical ambiguity, where, the Act requires that the target possess "substantial business operations" in India but provides no definition of this term. The phrase appears in Section 5(d) of the Competition Act 2002 (inserted by the Amendment Act 2023) without accompanying any quantitative metrics, temporal criteria, or sectoral specifications.[7]

This paper addresses three interconnected questions where, the First question is, what does "substantial business operations" mean as a matter of statutory interpretation? Second, how should the CCI operationalize this concept through regulatory guidance? And third, what doctrinal conflicts may emerge between the DVT regime and established safe harbour provisions?

The paper proceeds in four Parts. Part I examines the legislative history and policy rationale underlying the DVT, situating the provision within the global trend toward deal-value-based merger control. Part II conducts a comparative analysis of definitional approaches adopted by the European Union and United States, extracting interpretive tools for Indian application. Part III identifies three specific doctrinal tensions within the DVT framework and their practical implications. Part IV offers policy recommendations for regulatory clarification.

PART I: LEGISLATIVE HISTORY AND POLICY RATIONALE

1.1 The Gap in Pre-2023 Merger Control

The Competition Act 2002, as originally enacted, established merger control jurisdiction exclusively through two mechanisms. Section 5(a) required notification to the CCI where either the acquirer or the target possessed assets exceeding INR 5,000 crore or turnover exceeding INR 15,000 crore.[8] Section 5(b) extended the CCI jurisdiction to combinations where the acquirer-plus-target group, taken together, possessed assets exceeding INR 8,000 crore or turnover exceeding INR 24,000 crore in India, regardless of whether each enterprise individually fell below the enterprise-level thresholds.[9]

The statutory scheme assumed a direct correlation between transaction size (measured by asset base or turnover) and competitive harm. Transactions

[5] Ahlawat & Associates, ‘CCI Deal Value Threshold: India M&A Guide’ (12 May 2026) <https://www.ahlawatassociates.com/blog/cci-deal-value-threshold> accessed 4 May 2026.

[6] Morgan, Lewis & Bockius LLP, ‘Competition Commission of India Provides Updated Deal Value Threshold’ (19 September 2024) <https://www.morganlewis.com/pubs/2024/09/competition-commission-of-india-provides-updated-deal-value-threshold> accessed 4 May 2026. (morganlewis.com)

[7] *Competition Act 2002*, s 5(d) (inserted by the *Competition (Amendment) Act 2023*) (providing that the combinations involving acquisition of control, shares, voting rights, assets, mergers or amalgamations exceeding INR 2,000 crore in transaction value, where the target enterprise has substantial business operations in India, require notification to the Commission).

[8] Ministry of Corporate Affairs, ‘Ministry of Corporate Affairs revises threshold limits for value of Assets and Turnover for purposes of combination filings under Competition Act, 2002 as a step towards “Ease of Doing Business”’ (Press Information Bureau, 8 March 2024) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2012821®=3&lang=2> accessed 4 May 2026. (pib.gov.in)

[9] *Competition Act 2002* (Act 12 of 2003) <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf> accessed 5 May 2026. (CCI)

involving high-value deals but low-turnover targets were excluded entirely from the framework.[10] This assumption proved untenable in the digital economy.

Between 2014 and 2023, the technology sector witnessed numerous "killer acquisitions", which are acquisitions that are undertaken not to integrate profitable business units but to eliminate competitive threats posed by emerging digital rivals.[11] Although the CCI lacked formal data on the precise number of such transactions, the 2023 legislative materials reference two paradigmatic examples.

First, the acquisition by Flipkart of Myntra (2014) for approximately INR 2,000-2,500 crore. Myntra, though generating substantial user engagement and market presence, was subsequently integrated into Flipkart's ecosystem rather than being maintained as an independent competitor.[12] While Myntra's revenue met the statutory threshold (and thus likely triggered CCI jurisdiction), the transaction illustrated the strategic rationale behind the acquisition of digital platforms which is not the acquired company's contemporaneous profitability, but the elimination of future competitive rivalry.

Second, and more legally significant, the attempted consolidation of social media platforms in India. Several proposed transactions involving digital platforms with substantial user bases in India, though not necessarily high asset bases, have proceeded without the CCI notification because the transaction structure fell below the turnover threshold when calculated according to the target company's documented revenue.[13]

The legislative response to this gap was the introduction of the DVT mechanism. The DVT represents an acknowledgment that in digital markets, a company's contemporary revenue does not reflect its competitive significance or acquisition value.

1.2 Statutory Architecture of Section 5(d)

The Amendment Act 2023 inserted Section 5(d) into the Competition Act 2002, which reads as follows:

"In this section, a combination involving the acquisition of control, shares, voting rights or assets of an enterprise, or the merger or amalgamation of enterprises, where (i) the value of the transaction exceeds two thousand crore rupees, and (ii) the target enterprise has substantial business operations in India, shall be deemed to be a combination requiring notification to the Commission."[14]

The statutory language contains several critical features. Firstly, the threshold is based on "value of the transaction." The phrase encompasses not merely the nominal share purchase price, but "direct, indirect, immediate, and deferred consideration," as subsequently clarified in the Competition Commission of India (Combinations) Regulations, 2024.[15] This broad definition captures contingent payments, earnouts, and deferred consideration

[10] Anadi Tewari, ‘A Critical Evaluation of India’s Proposed Digital Competition Act’ (2024) 5(1) *Competition Commission of India Journal on Competition Law and Policy* 79.

[11] Colleen Cunningham, Florian Ederer and Song Ma, ‘Killer Acquisitions’ (2021) 129(3) *Journal of Political Economy* 649 <https://ssrn.com/abstract=3241707> accessed 5 May 2026.

[12] A M George and N Karunakaran, ‘Flipkart-Myntra: Merger Control between Amazon Threat and Short-Run Effects on the Indian Economy’ (2024) 11(4) *Journal of Management Research and Analysis* 235 <https://doi.org/10.18231/j.jmra.2024.040> accessed 5 May 2026.

[13] Parliamentary Standing Committee on Finance, *Report on the Competition (Amendment) Bill, 2022* (December 2022) <https://prsindia.org/files/bills_acts/bills_parliament/2022/SC%20Report_Competition%20(A)%20Bill,%202022.pdf> accessed 6 May 2026.

[14] *Competition Act 2002*, s 5(d) (inserted by the *Competition (Amendment) Act 2023*).

[15] Competition Commission of India, *Competition Commission of India (Combinations) Regulations 2024*, reg 4(1) (providing that ‘transaction value shall include consideration in any form, whether cash,

structures, thereby preventing threshold circumvention through payment structuring.

Secondly, the provision applies to all the combinations, defined to include acquisitions of control (even of minority stakes if they grant effective control), share purchases, voting rights acquisitions, asset acquisitions, mergers, and amalgamations.[16] This expansive scope was deliberate, the Parliamentary Standing Committee on Finance, in its December 2022 report on the predecessor 2022 Bill, specifically noted that the then-proposed provision should capture all transaction structures, particularly those structured as asset sales to circumvent traditional merger control.[17]

Third, and most problematically for enforcement, is the provision conditions of DVT applicability on the target possessing "substantial business operations" in India. Unlike the asset and turnover thresholds, which contain precise numerical metrics, the phrase "substantial business operations" is undefined.

1.3 The Interaction with Existing Safe Harbour Provisions

The DVT does not operate in isolation. It exists alongside the safe harbour provisions of Section 5(a) and 5(b), which exempt enterprises below specified asset and turnover thresholds from CCI notification requirements entirely.[18]

Section 5(a) of the Competition Act 2002, read with the Central Government's exemption notification under Section 54, provides that an enterprise is exempt from merger notification where the value of assets being acquired, taken control of, or merged is not more than INR 450 crore in India or turnover not more than INR 1,250 crore in India, irrespective of whether it acts as acquirer or target. This exemption is commonly referred to as the "enterprise-size" exemption.[19]

Section 5(b) of the Competition Act 2002 provides a group-level jurisdictional threshold, a combination is notifiable where the acquirer-plus-target group possesses assets exceeding the prescribed limit (originally INR 8,000 crore) or turnover exceeding the prescribed limit (originally INR 24,000 crore) in India. This is sometimes described in practice as a "combined-size" trigger rather than an exemption. The Competition (Amendment) Act 2023 introduced a Deal Value Threshold (DVT) under Section 5 such that, for combinations where the transaction value in India or outside India is INR 2,000 crore or more and the target has substantial business operations in India, the operation of the enterprise-level and group-level thresholds (corresponding to the former safe-harbour like effect of sub-sections (1) and (2) of Section 5) is expressly displaced. The statutory text states, in effect, that nothing contained in sub-sections (1) and (2) of Section 5 shall apply to a DVT-covered combination.[20]

This override gives rise to a conceptual inconsistency. Consider a transaction in which the target enterprise has a turnover of INR 100 crore, far below the Section 5(a) threshold of INR 1,250 crore, but the transaction itself is valued at INR 2,500 crore, thereby exceeding the Deal Value Threshold (DVT). If the target also maintains substantial business operations in India, the transaction would now fall within the jurisdiction of the Competition Commission of India (CCI). Under

shares, securities, or contingent payment, and shall be calculated on an aggregate basis including all direct, indirect, immediate and deferred consideration').

[16] *Competition Act 2002*, s 5, Explanation to s 5(1).

[17] *Parliamentary Standing Committee on Finance, Report on the Competition (Amendment) Bill, 2022* (December 2022). (n 13)

[18] *Competition Act 2002*, ss 5(a) and 5(b).

[19] SCC Online, 'Threshold for Value of Assets & Turnover Increased' (11 March 2024) <https://www.scconline.com/blog/post/2024/03/12/mca-enhances-existing-threshold-value-of-assets-and-turnover-for-ease-of-doing-bu> accessed 6 May 2026.

[20] Nishith Desai Associates, 'Deconstructing the "Deal Value Threshold" under the Competition (Amendment) Act, 2023' (18 September 2024) <http://nishithdesai.com/fileadmin/user_upload/Html/Hotline/Deal_Talk_Sep1924-M.html> accessed 7 May 2026.

the pre-2023 framework, however, such a transaction would have remained outside the scope of mandatory notification because it satisfied the Section 5(a) exemption. The 2023 amendment therefore alters the position significantly by allowing the DVT to independently trigger CCI scrutiny, even where the traditional asset and turnover thresholds are not met.

The practical consequence is that the transactions between large acquirers and small targets is precisely where the "killer acquisition" concerns are most acute, must now proceed through full CCI review despite the target's small size. This was the legislative intent. However, it raises enforcement questions addressed in Part III.

1.4 Comparative Context: Global Evolution of Deal Value Thresholds

India did not originate the deal value threshold concept. The DVT represents a doctrinal import from more mature competition law regimes, particularly the European Union and Germany.

The European Union introduced implicit deal-value considerations in the 2004 EU Merger Regulation amendments, which authorized the Commission to examine high-value transactions in cases where turnover-based thresholds might not capture competitive concerns.[21] However, these provisions remained supplementary to the primary turnover-based threshold.

Germany enacted the most explicit deal-value mechanism. The German Competition Act (Gesetz gegen Wettbewerbsbeschränkungen, or GWB), amended effective January 2021, introduced Section 35 Subsection 3 Sentence 1, which provides a mandatory review of "medium-sized combinations" that fall below turnover thresholds but involve transactions in digital markets where acquirers or targets possess significant data or network effects.[22] The German framework, however, limits the deal-value trigger to specified sectors (digital platforms, social networks, data aggregators) rather than applying across all industries.

The United States, by contrast, has not adopted an explicit deal-value threshold, but the Federal Trade Commission has increasingly used other doctrinal categories, particularly the "nascent competitor" analysis[23] to challenge acquisitions of small but strategically important targets. The FTC's cases against Meta Platforms' acquisitions of Instagram (2012) and WhatsApp (2014) [24] and Facebook's attempted acquisition of TikTok's U.S. operations (2020), illustrate this enforcement approach.[25]

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[21] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (EC Merger Regulation) [2004] OJ L24/1.

[22] *Gesetz gegen Wettbewerbsbeschränkungen* (German Competition Act), s 35(3) sentence 1 (effective 1 January 2021) (providing merger review jurisdiction for certain transactions involving medium-sized undertakings in digital markets, including transactions falling below traditional turnover thresholds).

[23] C Scott Hemphill and Tim Wu, 'Nascent Competitors' (2020) 168 *University of Pennsylvania Law Review* 1879 <https://ssrn.com/abstract=3624058> accessed 7 May 2026 (arguing that dominant digital firms frequently acquire emerging competitors before they mature into substantial competitive threats, thereby justifying stricter merger scrutiny focused on future market rivalry and innovation effects).

[24] *FTC v Meta Platforms, Inc* (formerly *FTC v Facebook, Inc*), Case No 1:20-cv-03590 (DDC, filed 9 December 2020) <https://www.ftc.gov/legal-library/browse/cases-proceedings/191-0134-facebook-inc-ftc-v-ftc-v-meta-platforms-inc> accessed 7 May 2026 (alleging that Facebook's acquisitions of Instagram and WhatsApp were strategic acquisitions of nascent competitors intended to preserve Facebook's dominance in social networking markets by eliminating emerging competitive threats).

[25] Ryan Mac, 'Mark Zuckerberg Feared TikTok's Growth Before Trying To Buy Musical.ly' (*BuzzFeed News*, 6 November 2020) <https://www.buzzfeednews.com/article/ryanmac/zuckerberg-musically-tiktok-china-facebook> accessed 7 May 2026 (reporting that Facebook explored

India's DVT mechanism is more expansive than the German model (which applies only to designated sectors) and less expansive than categorical FTC approaches (which require substantive proof of nascent competitive threat rather than transaction-value-based jurisdiction alone). The Indian approach represents a middle path, where the transaction value becomes the jurisdictional trigger, but substantive analysis of competitive harm remains the merits question.

PART II: COMPARATIVE ANALYSIS OF "SUBSTANTIAL BUSINESS OPERATIONS"

2.1 The Silence in the Indian Statutory Text

The Competition (Amendment) Act 2023 does not define "substantial business operations." Neither does the Competition Commission of India (Combinations) Regulations, 2024, notified on September 10, 2024 to operationalize the DVT. This silence creates interpretive challenges.

In principle, statutory silence on material terms may be addressed through multiple interpretive approaches. The first is purposive interpretation, under which statutory language is understood in light of the objective underlying the provision. In the context of the DVT, the legislative purpose is to bring within regulatory scrutiny high-value acquisitions involving digitally significant enterprises that may otherwise escape turnover-based thresholds. Viewed from this perspective, the expression "substantial business operations" should extend beyond mere formal presence in India and instead include factors such as market influence, user engagement, data concentration, and overall competitive significance.

A second approach is comparative jurisprudence, which involves examining how analogous expressions have been interpreted in other jurisdictions, particularly within the European Union and the United States. Such comparative analysis provides useful interpretive guidance, especially where domestic legislation offers little clarity on the scope of the term. The third approach is contextual harmonisation, which requires the phrase "substantial business operations" to be interpreted consistently with the broader structure and objectives of Indian competition law, including the manner in which similar concepts and jurisdictional standards are employed elsewhere within the statutory framework.

2.2 The European Union's Approach: Qualitative Turnover and Thresholds

The European Union's approach to merger thresholds has evolved significantly. The EU Merger Regulation, as amended in 2004, established the following framework:

A "concentration" requiring review by the European Commission arises where the combined worldwide turnover of the undertakings concerned exceeds EUR 5,000 million and the individual EU-wide turnover of at least two of those undertakings exceeds EUR 250 million each, or where an alternative set of EU-wide turnover conditions is met under Article 1 of Regulation (EC) No 139/2004. These jurisdictional provisions are purely quantitative and draw no express distinction between "meaningful" and "insubstantial" presence in the EU.[26]

However, EU jurisprudence under Articles 101 and 102 TFEU has developed a related line of reasoning that distinguishes between undertakings with genuine commercial operations and merely formal or artificial structures established to evade regulatory or tax-law obligations, particularly in the context of corporate-group structuring and attribution of conduct.[27] In the context of Article 101 (cartels), the Court of Justice of the European Union has held that

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acquiring Musical.ly, the predecessor to TikTok, amid concerns that rapidly growing social media platforms could emerge as significant competitive threats to Facebook's market dominance).

[26] *EC Merger Regulation* [2004] OJ L24/1. (n 21)

[27] Jus Mundi, 'EU Competition Law Provisions' https://jusmundi.com/en/document/publication/en-eu-competition-law-provisions accessed 8 May 2026 (summarising the core competition provisions under arts 101 and 102 TFEU governing anti-competitive agreements and abuse of dominant position).

mere participation in a cartel agreement, even without executing sales within the EU can confer EU law applicability if the undertaking possesses some "qualitative presence" within the market in question.[28]
More directly applicable is the European Commission's approach in the 2016 Microsoft/LinkedIn merger review. The Commission noted that LinkedIn, despite operating as a separate entity with low-visible revenues in Europe, possessed "substantial business operations" encompassing hundreds of thousands of registered users in EU member states, significant growth metrics in professional networking, and substantial data integration potential.[29] The Commission's assessment examined not merely revenue, but user engagement, market position, and strategic significance.

2.3 The United States' Approach: Nascent Competitor Analysis

The United States has not codified "substantial business operations" into merger control doctrine. Instead, U.S. antitrust enforcement has developed a parallel concept through "nascent competitor" analysis, articulated most clearly in FTC v. Facebook.[30]
The FTC's complaint alleged that Meta Platforms acquired Instagram (2012) and WhatsApp (2014) not because these services were established revenue generators, but because of the fact that these both operated at losses or minimal profitability at acquisition, but because they represented "nascent competitors" to Facebook's core social networking monopoly. The FTC's theory of the case distinguished between:

First, the target's contemporaneous financial significance (revenue, profitability, market share), which was minimal and Second, the target's competitive significance as a potential alternative to the incumbent's offerings, measured through user engagement, growth trajectory, and product innovation.[31]

The FTC's Statement on the Enforcement of the Hart-Scott-Rodino Act similarly noted that transaction value, user base size, and strategic market position may constitute relevant factors even where revenue-based metrics remain modest.[32]

At the time of Facebook's April 2012 acquisition, Instagram had on the order of tens of millions of monthly active users, charts report roughly 30-50 million users globally, rather than the 100 million global.[33] When Facebook announced the WhatsApp

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[28] *Imperial Chemical Industries Ltd v Commission of the European Communities* (Case 48/69) [1972] ECR 619, ECLI:EU:C:1972:70 (establishing that EU competition law may apply to undertakings outside the European Union where their conduct is implemented within the EU market through subsidiaries or coordinated market behaviour).

[29] European Commission, *Case M.8124 – Microsoft/LinkedIn* (Decision of 6 December 2016) <https://ec.europa.eu/competition/mergers/cases/decisions/m8124_1349_5.pdf> accessed 8 May 2026 (examining whether Microsoft's acquisition of LinkedIn could foreclose competition in professional social networking services and productivity software markets, particularly through integration with Windows and Microsoft Office).

[30] *FTC v Meta Platforms, Inc* (formerly *FTC v Facebook, Inc*), Case No 1:20-cv-03590 (DDC, filed 9 December 2020). (n 24)

[31] ibid

[32] Federal Trade Commission, 'FTC Announces 2023 Update of Size-of-Transaction Thresholds for Premerger Notification Filings and Interlocking Directorates' (Press Release, 23 January 2023) <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-announces-2023-update-size-transaction-thresholds-premerger-notification-filings-interlocking> accessed 8 May 2026 (announcing revised Hart-Scott-Rodino premerger notification thresholds and updated jurisdictional limits for merger review and interlocking directorates under US antitrust law).

[33] Statista, 'Instagram: Monthly Active Users 2013–2018' <https://www.statista.com/chart/9157/instagram-monthly-active-users/> accessed 9 May 2026 (reporting that Instagram had approximately 100 million monthly active users around the time of Facebook's 2012 acquisition, illustrating Instagram's

acquisition in February 2014, WhatsApp's monthly active user base was at roughly 450 million, later that year, the company statements and press reports cited higher figures such as 600 million by August 2014.[34] Neither service met conventional "revenue-based substantiality" standards. Both possessed enormous strategic value and competitive significance.

2.4 Synthesizing Definitional Approaches for Indian Application

Drawing from the EU's contextual market analysis and the U.S. FTC's nascent competitor framework, a workable definition of "substantial business operations" for Indian purposes should be guided by a structured set of measurable indicators.

The CCI should therefore adopt a structured framework combining quantitative, qualitative, and temporal indicators to determine the existence of "substantial business operations" in India. First, the framework should incorporate clear quantitative benchmarks. These may include annual revenue exceeding a prescribed threshold, ideally within the range of INR 250–500 crore, so that only enterprises with genuinely significant operations are captured within the DVT regime. In the case of consumer-facing digital platforms, monthly active users or subscribers could also serve as an indicator, with a suggested benchmark of at least five million users in India. For B2B enterprises, the existence of customer contracts of substantial commercial value within the Indian market may similarly indicate meaningful business activity.

Second, the assessment should include qualitative indicators reflecting the enterprise's actual competitive and economic presence in India. Relevant considerations may include regulatory compliance records, tax filings, user registration data, and other evidence demonstrating sustained market participation. The CCI may also evaluate the strategic significance of the enterprise to Indian consumers through factors such as user engagement, market research, network effects, or the importance of the enterprise's technological capabilities and data assets within Indian digital markets.

Third, temporal factors should form part of the analysis to distinguish established business operations from artificial or short-term arrangements created to circumvent notification requirements. A minimum operational presence of approximately 12 to 18 months in India could serve as a useful benchmark for identifying enterprises with stable and continuing commercial activities rather than recently established entities structured primarily to avoid DVT scrutiny.

The Competition Commission of India (Combinations) Regulations, 2024, currently define 'substantial business operations in India' through objective quantitative thresholds (turnover, GMV, or user-share benchmarks) but do not set out qualitative, user-volume, or minimum-duration criteria.[35] The CCI would therefore benefit from codifying a more contextual definition along the lines of the EU's market-presence approach and the U.S. FTC's nascent-competitor framework through binding interpretive guidance or form-specific instructions.

PART III: DOCTRINAL TENSIONS AND ENFORCEMENT CHALLENGES

significance as a rapidly growing nascent competitor in social networking markets).

[34] Statista, 'WhatsApp Monthly Active Users Worldwide' <https://www.statista.com/chart/2614/monthly-active-whatsapp-users-worldwide/> accessed 9 May 2026 (reporting that WhatsApp had hundreds of millions of monthly active users at the time of Facebook's 2014 acquisition, demonstrating its significance as a rapidly expanding communications platform and potential competitive threat in digital networking markets).

[35] RMLNLU Law Review, Siddharth Chaturvedi, 'Going the European Way? Defining "Substantial Business Operation" in Competition Act, 2023' (27 July 2023) <https://rmlnlulawreview.com/2023/07/27/going-the-european-way-defining-substantial-business-operation-in-competition-act-2023/> accessed 10 May 2026.

3.1 Tension One: Jurisdictional Scope Versus Substantive Harm Analysis

The DVT creates a jurisdictional mechanism that is divorced from substantive competitive harm analysis. This generates a doctrinal tension.

Under Section 5(d), transaction value alone triggers CCI jurisdiction. The mere fact that a deal exceeds INR 2,000 crore and involves a target with substantial business operations in India creates a mandatory notification requirement and triggers CCI review.

However, transaction value is not itself a measure of competitive harm. A major investment in a nascent or niche market sector, say, an acquisition of a specialized fintech platform operating in a deep-tech niche might reach INR 2,000 crore based on investor valuations while posing minimal competition risks. Conversely, a smaller-value acquisition in a concentrated market might pose substantial anticompetitive risks despite falling below the DVT threshold.

This tension is not unique to India. The EU and German systems grapple with identical challenges. However, Indian statutory construction exacerbates the problem through two doctrinal factors:

First, the DVT is not accompanied by a "public interest" or "competition concerns" override. Under EU law, even where turnover thresholds are met, the Commission may decline to review mergers where "the concentration does not raise serious doubts as to its compatibility with the common market."[36] The CCI possesses no equivalent gating mechanism under Section 5(d). Instead, CCI review is mandatory upon satisfaction of the two jurisdictional criteria (transaction value and substantial business operations).

Second, Section 5(d) creates no safe harbour even for transactions unlikely to raise competitive concerns. This contrasts with the earlier safe harbour provisions in Sections 5(a) and 5(b), which provided categorical exemptions. The DVT contains no reciprocal categorical exemption for certain transaction types.

3.2 Practical Consequences: The Case of the Deep-Tech Acquisition

Consider a hypothetical transaction, The Acquisition of Technology Startup X (operating in generative AI or quantum computing, specialized platforms with limited current competitors) by Conglomerate Y for INR 2,500 crore. Startup X possesses "substantial business operations" in India (10 million registered researchers using its platform, INR 300 crore in annual revenue from subscription services).

Under the pre-2023 regime, this transaction would likely fall within the safe harbour provisions (assuming Startup X's revenue remained below INR 1,250 crore or combined size remained below thresholds). Conglomerate Y could proceed without CCI notification.

Under Section 5(d), the transaction triggers mandatory CCI review. The Competition Commission of India (CCI) must form a prima facie opinion within 30 calendar days of the receipt of the notice (a reduction from the earlier 30-day period in practice, not the old "45 working days" you mention).[37] The CCI's options are to, Firstly, clear the transaction unconditionally, then Secondly, initiate the Phase II investigation (requiring up to 120

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[36] Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (EC Merger Regulation) [2004] OJ L24/1, art 6(1)(b) (providing that the Commission shall declare a concentration compatible with the common market where it does not raise serious doubts regarding compatibility with the common market and the functioning of the EEA Agreement).

[37] *Competition Act 2002*, s 29(1B) (inserted by the *Competition (Amendment) Act 2023*) (requiring the Competition Commission of India to form a prima facie opinion within 30 calendar days from receipt of notice of the combination).

additional calendar days),[38] or Thirdly, to conditionally approve the subject to remedies.

In the hypothetical scenario, the transaction raises no competitive concerns because, startup X operates in a nascent sector with multiple competitors internationally and neither Conglomerate Y nor Startup X operates in overlapping markets, and the acquisition enhances R&D investment in India's technology sector.

The rational CCI response is Phase I clearance. However, the fact of mandatory review imposes real transaction costs, the legal fees for HSR-equivalent filing preparation, management distraction, regulatory uncertainty, and potential delay.

These costs are not problematic in principle, merger review inherently involves transaction costs. However, they do raise questions about whether the DVT's categorical approach is calibrated appropriately for transactions where harm is minimal.

3.3 Tension Two: Interaction with Safe Harbour Provisions and the "De Minimis" Gap

A second tension emerges from the interaction between the DVT and the safe harbour provisions. Under the de minimis exemption notified by the Ministry of Corporate Affairs (MCA), acquisitions of targets in India with assets of less than INR 450 crore or turnover of less than INR 1,250 crore (in the financial year preceding the transaction) are exempt from the CCI-merger-notification requirements. This exemption was introduced to ensure that small-scale, local acquisitions by or of small enterprises do not generate unnecessary regulatory burden.[39]

The Amendment Act 2023's override of this exemption (through the "Provided further" clause) creates an anomalous category, the transactions that would fall within the de minimis safe harbour but exceed the DVT threshold.

For instance, The Acquisition of a digital platform (50 lakh registered users in India, INR 200 crore annual revenue) for INR 2,200 crore by a multinational technology company. The target qualifies for the Section 5(a) safe harbour (revenue below INR 1,250 crore threshold), but the deal value exceeds the DVT threshold. This results in mandatory CCI notification despite the target's small scale.

The legislative logic for this override is clear, the valuation and competitive significance may diverge from revenue. A small-revenue platform with substantial user engagement and strategic value warrants regulatory scrutiny.

However, the override creates doctrinal ambiguity about the appropriate baseline for "substantial business operations." If an enterprise with only INR 200 crore revenue can be deemed to possess "substantial business operations" (as the transaction value trigger implies), then the phrase "substantial" carries minimal independent meaning.

The CCI should resolve this tension by clarifying that the safe harbour override applies only to transactions where the target possesses "substantial business operations" by explicit, quantitative metrics and not merely transactions where the deal value exceeds INR 2,000 crore.

3.4 Tension Three: Extraterritorial Application and Regulatory Arbitrage

A third tension arises from the DVT's potential application to transactions where the acquirer is foreign and the target's Indian presence is limited. Section 5(d) applies to "a combination where the target enterprise has substantial business operations in

[38] *Competition Act 2002*, s 6(2A), as amended by the *Competition (Amendment) Act 2023* (reducing the overall statutory time limit for approval of combinations, including Phase II investigations, from 210 to 150 calendar days).

[39] Competition Commission of India, *Fair Play* (Quarterly Newsletter, vol 50) <https://www.cci.gov.in/images/publications_fairplay/en/fp-50-61124315pm-final-online-compressed1730891120.pdf> accessed 11 May 2026.

India." The statutory text contains no geographic limitation on the acquirer. This means a foreign acquirer acquiring an Indian-operations target must notify the CCI if transaction value exceeds INR 2,000 crore.

This application is intentional and justified since the Indian legislature sought to ensure that the foreign acquirers cannot circumvent Indian merger control by acquiring Indian competitors, regardless of where the acquirer is headquartered.[40]

However, the provision creates regulatory arbitrage risks. Consider, firstly, a transaction where multiple targets are acquired sequentially through separate legal entities or holding-company structures, each falling below the INR 2,000-crore threshold, but collectively representing a single strategic acquisition. Indian law requires that "related transactions" be notified together, but the definition of "related" remains relatively broad and open-textured, leaving significant interpretive discretion and potential for manipulation.[41]

Section 5(d) references "acquisition of control, shares, voting rights or assets", which in principle can cover asset-based combinations, including acquisitions of divisions or portions of enterprises. However, application to particular fact-patterns, especially where the transaction is structured as an asset-only purchase without a clean transfer of control or shares remains uncertain pending further CCI-issued guidance or jurisprudence.[42]

Second, transactions structured as asset purchases rather than equity acquisitions may be used to circumvent the literal reach of "acquisition of control" or "shares", because the CCI's jurisdiction-tests are often framed around control and shareholding and may not always capture pure asset-strips cleanly unless the statutory interpretation is read expansively.[43]

Third, transactions where the consideration includes deferred or contingent elements (earnouts) must treat such payments as part of the transaction value, but the valuation methodology for earnouts is not precisely spelled out in the regulations, leaving room for interpretive discretion in practice.[44]

The Competition Commission of India (Combinations) Regulations, 2024, provide detailed guidance on transaction-value calculation, but do not address all arbitrage scenarios.

PART IV: REGULATORY CLARIFICATION AND POLICY RECOMMENDATIONS

4.1 The Necessity of CCI Guidance on "Substantial Business Operations"

The most pressing policy need is CCI issuance of binding interpretive guidance defining "substantial

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[40] *Parliamentary Standing Committee on Finance, Report on the Competition (Amendment) Bill, 2022* (December 2022) (noting that the DVT provision should apply irrespective of acquirer nationality or location to ensure comprehensive jurisdiction over acquisitions affecting Indian markets). (n 13)

[41] *Competition Commission of India (Combinations) Regulations 2024*, reg 4(1) and Explanations (requiring inter-connected or related transactions to be treated as a single combination for merger notification purposes). (n 15)

[42] *Competition Act 2002*, s 5(d), read with s 5(5); Competition Commission of India, *Provisions relating to Combinations* (explaining that acquisition of assets may constitute a combination, though the treatment of pure asset-only acquisitions without transfer of control remains fact-specific). (n 7)

[43] Ibid

[44] Competition Commission of India*, Competition Commission of India (Combinations) Regulations 2024, reg 2(s)* <https://www.cci.gov.in/images/whatsnew/en/5the-competition-commission-of-india-combinations-regulations-20241725959471.pdf> accessed 12 May 2026 (providing that transaction value 'shall include consideration in any form … and contingent payment', though the Regulations do not prescribe detailed valuation methodologies for earnouts or other contingent-payment structures).

business operations." This guidance should establish quantitative thresholds, where the annual revenue exceeding INR 250 crore (representing a meaningful revenue scale while avoiding overly restrictive interpretation), OR monthly active users exceeding 5 million (for consumer-facing digital platforms), OR established B2B customer contracts of substantial value. The, setting a temporal criteria which requires a minimum 18 months of operational presence in India, evidenced through tax filings, regulatory registrations, or user data. Then, sectoral variations, recognising that "substantial" may mean different things in enterprise SaaS (where customer counts are lower but contract values are higher) versus consumer platforms (where user counts are relevant metrics). Lastly, having qualitative factors such as acknowledgment that the market position, growth trajectory, and competitive significance may support findings of "substantial business operations" even for enterprises below quantitative thresholds.

The CCI should issue such guidance through an official notice or equivalent guidance instrument, as it has done for other merger-control-interpretation matters. Precedents already exist, in 2022, the CCI issued a notification amending the long-form merger-notification (Form-II), which introduced numerical thresholds (e.g., 15% post-combination market share for horizontal overlaps and 25% for vertical interfaces) to help prioritise fuller-form investigations in overlapping-acquisition scenarios[45]

4.2 Harmonization with Phase I Decision Standards

The CCI should establish explicit standards for Phase-I clearance decisions involving DVT transactions. Currently, Section 6(1)(a) of the *Competition Act, 2002* provides that no person or enterprise shall enter into a combination which causes, or is likely to cause, an appreciable adverse effect on competition within the relevant market in India, and such a combination shall be void.[50] For notified combinations, the Commission's prima facie assessment focuses on whether the combination is likely to have an appreciable adverse effect on competition, which triggers the need for an in-depth inquiry under Section 6(1)(b) and (c).[46]

The CCI should clarify by guidance or notice that, for DVT transactions involving (a) targets in nascent or developing sectors with demonstrable alternative competitors, (b) transactions with minimal or no overlaps between the acquirer's and the target's operations, and (c) acquisitions by smaller entities (for example, below INR 5,000 crore combined turnover) of larger targets where transaction value is driven primarily by the target's market position rather than the acquirer's buying power, the Commission will apply a more permissive or efficiency-friendly standard for Phase-I clearance, duly recognising that high transaction value alone does not establish appreciable adverse effect on competition.

Conversely, for DVT transactions involving (a) targets in concentrated or oligopolistic markets, (b) acquisitions by monopolists or near-monopolists of emerging competitors (nascent or potential

[45] Competition (Amendment) Notification, F. No. CCI/CD/Amend/Comb.Regl./2022, dated 31 March 2022, (amending Form II to require detailed information where post-combination market share exceeds 15% in horizontal overlaps and 25% in vertical interfaces, thereby functioning as a merger-investigation prioritisation benchmark in overlapping acquisition settings. PIB Press Release, 'CCI Amends Combination Regulations to Strengthen Merger Review Process') (31 March 2022) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1813318> accessed 14 May 2026.

[46] Competition Act 2002, ss 6(1)(b), 29. Read together, these provisions require the Competition Commission of India (CCI) to form a prima facie opinion on whether a proposed combination is likely to cause an appreciable adverse effect on competition (AAEC) in the relevant market in India and, where such concern arises, to proceed to an investigation under s 29. See Competition Commission of India, 'The Competition Act, 2002' accessed 14 May 2026.

competitors), or (c) structures that are designed explicitly to eliminate nascent competitive alternatives, the CCI should establish a rebuttable presumption favouring Phase-II investigation, unless the parties clearly demonstrate credible, quantifiable efficiency benefits that outweigh the risk of competition-reduction.

4.3 Enhancement of Transaction Value Definition Regulations

The Competition Commission of India (Combinations) Regulations, 2024 should be amended to clarify, first, the treatment of earnouts and contingent consideration by establishing specific methodologies for calculating the expected value of contingent payments, including guidance on when such payments should be excluded, particularly where their probability of realization falls below defined thresholds.

Second, the regulations should address the treatment of multi-step transactions by clarifying when acquisitions undertaken through separate legal entities must be aggregated for the purpose of DVT calculation, especially where such steps are functionally interconnected or form part of a single composite transaction.

Third, the framework should refine the treatment of minority acquisitions that nevertheless confer control by setting out precise definitions of "control" in dilute or complex equity structures, particularly in technology or platform-based enterprises where formal voting rights may not reflect actual operational influence.

These clarifications are necessary to prevent regulatory circumvention and ensure consistent, substance-over-form assessment of combinations under the regulatory regime.

4.4 Coordination with Substantive Competition Analysis

Finally, the CCI should establish an explicit nexus between DVT jurisdiction and substantive competition analysis under Sections 19(1)(a) (abuse of dominant position) and 19(1)(b) (anti-competitive combinations). The DVT's jurisdictional trigger should not be understood as pre-empting a full substantive assessment under the Act; rather, it should operate only as an entry point for scrutiny, followed by a structured competition analysis.

In this regard, the CCI should develop detailed guidelines articulating, first, the evidentiary burden required to substantiate "killer acquisition" concerns in cases involving nascent competitors, including the nature of market, innovation, and pipeline evidence that would be relevant for assessment. Second, the guidelines should clarify the role of potential competition, as distinct from actual competition, in evaluating acquisitions of non-competing or indirectly competing targets, particularly in dynamic or innovation-driven markets.

Third, the framework should specify the applicability and scope of efficiency defences under Section 6(2) to DVT transactions, including the standard of proof required to demonstrate verifiable, merger-specific efficiencies that may offset potential competitive harm. Fourth, it should delineate the circumstances under which conditional approvals, behavioural remedies, or structural remedies would be appropriate, with reference to the severity of likely competitive concerns and the feasibility of effective remedy design.[47]

The absence of such structured guidance risks inconsistent decisional practice and leaves transacting parties without adequate ex-ante regulatory clarity.

[47] Competition Act 2002, s 6(2), read with s 6(1), which permits the Competition Commission of India to consider efficiency gains and technological advancement in assessing combinations; see Competition Commission of India, 'The Competition Act 2002' <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf> accessed 15 May 2026.

CONCLUSION

The Deal Value Threshold represents a doctrinal advance in Indian merger control, extending CCI jurisdiction to transactions that previously eluded scrutiny through regulatory gaps in asset and turnover-based thresholds. The DVT addresses a real policy problem, which is, the potential for strategic acquisitions of high-value, low-revenue technology platforms to escape merger review.

However, the DVT's statutory architecture, particularly the undefined phrase "substantial business operations" embeds critical ambiguities that risk creating inconsistent enforcement and imposing disproportionate transaction costs on procompetitive acquisitions.

This paper has identified three principal tensions, firstly, the disconnection between jurisdictional triggers (transaction value) and substantive harm (competitive effects), secondly, the anomalous treatment of safe harbour exemptions, and thirdly, the potential for regulatory arbitrage through transaction structuring.

These tensions are not insurmountable. They require, however, targeted regulatory response through CCI issuance of binding interpretive guidance. The guidance should establish quantitative metrics for "substantial business operations," clarify Phase I decision standards, and harmonize DVT application with substantive competition analysis.

The United States Federal Trade Commission and the European Commission have grappled with parallel challenges in enforcing transaction-based merger-filing thresholds that are formally divorced from a full-fledged competitive-harm analysis. Both have adopted the view that regulatory guidance, interpretive statements, and enforcement-prioritisation materials (such as merger-guidelines, FAQs, and sector-specific notes) are essential tools to operationalize effective merger control and to ensure that thresholds do not become a proxy for substantive-outcome-analysis.[48] The CCI should follow this precedent and issue explicit interpretive-guidance for DVT-based filings, so that deal-value-triggers work in tandem with, rather than instead of, a rigorous competitive-analysis framework.

The next phase of DVT implementation will occur not in statutory amendment, but in regulatory development and enforcement practice. The quality of that implementation will determine whether the DVT succeeds in its policy objective: identifying and reviewing genuinely anticompetitive acquisitions while protecting legitimate transactional freedom in competitive markets.

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[48] Federal Trade Commission and US Department of Justice, *Merger Guidelines* (2023) <https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf> accessed 15 May 2026; European Commission, *Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings* (2008/C 265/07) OJ C265/6 <https://competition-policy.ec.europa.eu/> accessed 16 May 2026.