LEGAL DUE DILIGENCE IN MERGERS AND ACQUISITIONS: BRIDGING THE REGULATORY GAPS IN INDIA'S M&A FRAMEWORK

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ABSTRACT

Legal due diligence in Indian mergers and acquisitions has traditionally been organised around a patchwork of separate regulatory regimes, including the Companies Act, 2013, the SEBI Takeover Regulations, and the Foreign Exchange Management Act, 1999. This blog examines two comparatively recent gaps in this patchwork: the Deal Value Threshold introduced by the Competition (Amendment) Act, 2023, which brings high-value, asset-light digital acquisitions within the Competition Commission of India's jurisdiction for the first time, and the emerging liability created by the Digital Personal Data Protection Act, 2023 for a target's historical data practices. It argues that closing these gaps requires better integration of competition and data protection review into the diligence process from the outset, rather than treating them as afterthoughts.

INTRODUCTION

India's mergers and acquisitions market has grown into one of the most active in Asia, with total deal value rising to US$123.8 billion in 2025, an 18% increase over the previous year.[1] Yet beneath this growth lies a structural complication that every dealmaker eventually confronts: there is no single law that governs an M&A transaction in India. Instead, a deal is stitched together across the Companies Act, 2013, the Competition Act, 2002, the SEBI Takeover Regulations, the Foreign Exchange Management Act, 1999, and, increasingly, the Digital Personal Data Protection Act, 2023. Legal due diligence — the process by which a buyer investigates a target's legal, financial, and regulatory standing before a deal closes — has traditionally been built to satisfy each of these regimes separately. That fragmented approach is now showing real cracks, particularly in two areas: competition law thresholds for digital-economy deals, and data protection liability.

A PATCHWORK, NOT A FRAMEWORK

[1]Ernst & Young, Selective Investing for India's M&A Deals 2025, EY India (2026), https://www.ey.com/en_in/insights/mergers-acquisitions/how-selective-investing-shaped-india-s-m-a-deals-in-2025.

Under Sections 230 to 234 of the Companies Act, a scheme of merger or amalgamation requires clearance from the National Company Law Tribunal, with notice sent to the Ministry of Corporate Affairs, the Registrar of Companies, and applicable sectoral regulators.[2] If the target is a listed entity, SEBI's Takeover Regulations impose a separate, parallel diligence obligation — Regulation 26 requires an independent due diligence report before an open offer can even be launched.[3] Add to this the Reserve Bank of India's oversight under FEMA for any cross-border element, and it becomes clear that "due diligence" is not one exercise but several, run in parallel, each answering to a different regulator with a different threshold for what counts as material risk.

This patchwork has generally worked because each regulator's concerns were, historically, fairly separable — competition concerns were about market share, securities concerns were about shareholder protection, and so on. That separability is breaking down.

GAP ONE: THE COMPETITION LAW BLIND SPOT FOR DIGITAL DEALS

Until 2023, the Competition Commission of India's jurisdiction over a merger depended largely on the asset value or turnover of the parties involved. This created a well-known loophole: a digital or technology company could be immensely valuable — commanding a dominant position in data, users, or market influence — while holding comparatively few physical assets on its balance sheet. Such acquisitions could, and did, escape CCI scrutiny entirely, simply because they did not cross the traditional asset or turnover thresholds.

The Competition (Amendment) Act, 2023 addressed this directly by introducing a Deal Value Threshold. Transactions exceeding roughly ₹2,000 crore in value now require mandatory CCI notification if the target has "substantial business operations" in India, regardless of asset size. This is a significant shift for due diligence practice. A diligence exercise that once treated competition clearance as a formality for asset-light digital acquisitions must now build in antitrust review as a core, non-negotiable workstream — including an early assessment of whether "substantial business operations" applies, a question that itself remains open to interpretive dispute given how recently the threshold was introduced. Failure to notify where

[2]Companies Act, No. 18 of 2013, §§ 230–234 (India).
[3]Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Regulation 26 (India).
[4]Competition (Amendment) Act, No. 9 of 2023, § 5 (India) (amending the Competition Act, No. 12 of 2002); Ministry of Corporate Affairs, Competition Commission of India (Combinations) Regulations (2024) (India).

required exposes parties to "gun-jumping" penalties, making this a live commercial risk, not a theoretical one.

GAP TWO: DATA PROTECTION AS AN UNDISCOVERED LIABILITY

The second gap is newer still. The Digital Personal Data Protection Act, 2023[5] has quietly transformed what counts as a "legal" risk in a target company. Where a target processes the personal data of Indian users — as most consumer-facing technology, fintech, or health-tech companies do — the buyer inherits not just commercial risk but statutory liability for how that data was collected, stored, and used prior to acquisition. Yet many standard due diligence checklists, built around older frameworks, were not designed to interrogate a target's data governance practices with the rigour this now demands. A target's consent mechanisms, data retention policies, and breach history are no longer peripheral IT concerns; they are legal exposures that can materially affect valuation and post-closing liability.

BRIDGING THE GAP

The deeper problem is not that Indian law lacks rules for either concern — it clearly does not. The problem is that due diligence, as commonly practised, has not caught up to the pace at which these rules have multiplied and interlocked. What is needed is not more regulation, but better integration: diligence frameworks that treat competition law and data protection review as core legal workstreams from the outset of a transaction, not as afterthoughts bolted on once a deal is substantially negotiated. Early-stage engagement with the CCI on threshold applicability, and a dedicated data protection audit as a standard diligence category, would go a long way toward closing this gap before it produces the kind of post-closing dispute that no warranty clause can fully cure.

As India's M&A market continues to scale, particularly in technology and digital sectors, the cost of treating due diligence as a checklist exercise rather than a genuinely adaptive one will only grow. The regulatory framework has evolved; due diligence practice must now evolve with it.

[5]Digital Personal Data Protection Act, No. 22 of 2023 (India).