The Indian Journal for Research in Law and Management
Open Access Law Journal – Copyright © 2026
Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

KILLER ACQUISITIONS AND COMPETITION LAW: IS INDIA PREPARED FOR BIG TECH ACQUISITIONS?

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ABSTRACT:

A ₹350 million acquisition can pass through India's merger control regime without the Competition Commission of India will ever hear of it, so long as the target's assets and turnover stay below the statutory thresholds. This is clearly how Zomato's acquired Uber Eats' Indian operations in 2020, and this shows a problem far bigger than a single deal. Killer acquisitions, in which a dominant firm buys a small rival to remove a upcoming competitor rather than to improve on its technology they remain largely invisible to a merger control regime that measures competitive significance through assets and turnover. The paper asks whether India's competition law framework is equipped to detect, assess and prevent such acquisitions in digital markets. The study is doctrinal as it analyses the Competition Act, 2002, the 2023 Amendment and the Combinations Regulations, 2024. It also examines the Commission's treatment of Walmart/Flipkart, Facebook/Jio and the WhatsApp privacy policy proceedings, and compares them from the European Union and Germany. It finds that the deal value threshold of Rs. 2,000 crores had made large transactions visible but leaves earlier stage acquisitions untouched, that Indian law contains no concept of nascent competition, and that data has no place in the statutory assessment of a combination. India has begun to see killer acquisitions without yet acquiring the tools to stop them.

Keywords: killer acquisitions, merger control, deal value threshold, nascent competition, digital markets.

Introduction:

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Antitrust Law, also known as the Competition Law, was made to protect consumers from the malpractices done by companies, such as engaging in anti-competitive practices, price rigging, forming monopolies, as well as other features like regulation of mergers and acquisitions, Competition Advocacy & Awareness. When Zomato acquired Uber Eats' India operations in 2020, it was an all-stock deal valued at around $350 million (Rs 2,485 crore). This transaction granted Uber a 9.99% ownership stake in Zomato.[2]This deal was never notified to the Competition Commission of India before the acquisition. Uber Eats assets were less than the threshold limits i.e., ≤ 450 crores INR that triggers the review of the combinations.[3] This a major gap that our laws have and the companies use these loopholes to benefit themselves or sometimes to commit fraud. Traditional laws were made which presumed market power with those for higher price and very less output. But today, a company can dominate the market by charging its consumers nothing and still have a significant share in the market. It can be a small and unprofitable company that has a very low revenue but has a very strong future growth. So, big companies acquire them, not because they want to grow them but to reduce their competition by eliminating them as a possible source of future competition. Under the previous threshold limits, these deals aren't that visible due to its low turnover and assets even though the deal is in hundreds of crores.

This paper explores all the challenges posed by the 'Killer Acquisitions' and their implications for competition law in India. Moreover, it identifies key gaps and offers recommendations for a more effective competition law framework.

Killer Acquisitions: Concept & Concern

i. What Are Killer Acquisitions?

This term was coined and popularized by three researchers, Colleen Cunningham, Florian Ederer, and Song Ma in a widely cited 2018 study. When an incumbent firm acquire an innovative target and terminates development of the target's innovations to preempt future competition. This type of acquisition was termed "killer acquisitions" as they eliminate

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[2] 'Zomato acquires Uber Eats in an all-stock deal', (MONEYCONTROL NEWS, JANUARY 21, 2020) <https://www.moneycontrol.com/news/business/zomato-buys-ubers-indian-food-delivery-business-4837071.html> accessed 16th July 2026

[3] 'Filing of Combination Notices' Competition Commission of India, <https://www.cci.gov.in/combination/combination/filing-of-combination-notice/introduction>accessed 17th July, 2026

potentially promising, yet likely competing, innovation.[4] In simple words, when a large company acquires a small innovative company that could be their potential competition in the future, to destroy it or shelves it completely. This was initially seen in big pharmaceutical companies like Abbott Laboratories and Piramal Healthcare. U.S. based Abbott Laboratories has acquired the pharmaceutical solution business of Piramal Healthcare for $3.72 billion (Rs 17,500 crores).[5] By doing this, Abbott became the largest player in the Indian pharmaceutical market with a market share of 7%. After the merger, certain essential drugs got expensive due to its pricing strategy. "The Abbott-Piramal case underscored the limitations of India's competition law in addressing killer acquisitions, particularly in the pharmaceutical sector"[6]

ii. Why are Digital Markets Special?

"The indirect network effects contribute to the growing importance of online platforms and most sellers/service providers in India, both in goods and services, now depend on intermediary platforms to access consumers online as consumers increasingly rely on these platforms to search for and purchase products on the internet."[7] When these platforms gather a vast user base, then it becomes a leverage for them as more and more sellers and buyers use their platform due to a vast choice. But all that changes when a new competitor enters a market with a better positioning, in terms of technology or options it gives to the user. It threatens the 'Network Effect' of the existing companies. "Network effects are present when a user's efficacy deriving from the consumption of a good or service surges with the number of others buying the good or service. For instance, Facebook as a platform is only useful when there are other users on that platform; otherwise, the value of the network is zero."[8] Now that becomes the biggest threat for the bigger players as it takes away their customers/user base whenever an

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[4] Colleen Cunningham, Florian Ederer, and Song Ma, 'Killer Acquisitions' (SSRN,12 Sep 2018) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3241707>accessed 18th July, 2026

[5] 'Abbott buys Piramal's pharma arm for $3.7bn', (The Times of India 22nd May,2010) <https://timesofindia.indiatimes.com/business/india-business/abbott-buys-piramals-pharma-arm-for-3-7bn/articleshow/5960176.cms> accessed 18th July, 2026

[6] TANISHTHA ANAND,' REGULATORY CHALLENGES IN CURBING KILLER ACQUISITIONS: A COMPETITION LAW PERSPECTIVE ON INDIA'S PHARMA AND STARTUP INDUSTRIES', (White black legal, May 2025) <https://www.whiteblacklegal.co.in/public/uploads/issues/2062234837.pdf> accessed 18th July, 2026

[7] Market Study on E-Commerce IN INDIA, Competition Commission of INDIA, <https://www.cci.gov.in/images/marketstudie/en/market-study-on-e-commerce-in-india-key-findings-and-observations1653547672.pdf>accessed 20th July, 2026

[8] Ankit Srivastava and Divyansha Kumar, Digital Economy, Data, and Dominance: An Indian Perspective, (Competition Commission of India Journal on Competition Law and Policy, December 2021) <https://ccijournal.in/index.php/ccijoclp/article/view/43/37>accessed 20th July, 2026

emerging competitor enters the market. One of the biggest problems in digital markets is that a lot of firms seem relatively small based just on their revenue or assets, but they may have a lot of potential to compete in the future. A startup may become a possible rival in the future because of its innovative technology, significant user data, or growing user base. However, normal merger control regulations primarily concentrate on the target's current asset worth or turnover, presuming that larger companies are more significant from a competitive standpoint. For example, "Facebook bought Instagram for $1 billion in 2012, a shocking sum at that time for a company with 13 employees, Instagram today has over one billion users and contributes over $20 billion to Facebook's annual revenue."[9] The emails between Mark Zuckerberg and former chief financial officer David Ebersman revealed that Facebook wanted to buy Instagram just to avoid any competition.[10]

iii. The Kill Zone Effect

The data says that the number of deals and dollar amounts invested by venture capitalists in the sector dropped significantly. "In the three years following an acquisition by Google and Facebook in a certain industry sector, VC investments in that sector drop by over 40% and the number of deals falls by over 20%."[11] The impact of killer acquisitions extends beyond a single transaction. The expectation that successful startups will be absorbed by dominant firms discourages fresh investment, and by removing promising rivals at an early stage, killer acquisitions can discourage future entrepreneurs.

India's Existing Competition Law Framework & Gaps

i. Relevant provisions of the Competition Act, 2002

Section 5 of the Competition Act, 2002 provides the definition of the transactions that form a combination and are therefore under the control of the Competition Commission of India (CCI). A combination includes acquisitions, mergers and amalgamations which cross the threshold limits provided by the CCI. The provision is intended to ensure that transactions that may have an appreciable impact on competition are reviewed prior to implementation. Under section 5(a), it is mentioned that the acquirer who has control, shares, voting rights or assets

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[9] Mark Zuckerberg bought Instagram as it was a 'threat' to Facebook, (Business Standard, July 30 2020) <https://www.business-standard.com/article/international/mark-zuckerberg-bought-instagram-as-it-was-a-threat-to-facebook-120073000324_1.html>accessed 21th July, 2026

[10] *Ibid*

[11] Sai Krishna Kamepalli, Raghuram Rajan, Luigi Zingales, Kill Zone,(NATIONAL BUREAU OF ECONOMIC RESEARCH, May 2020) <https://www.nber.org/system/files/working_papers/w27146/w27146.pdf>accessed 21th July, 2026

which have been acquired, if it exceeds the threshold limit of INR 1000 crores or a turnover of more than INR 3000 crores, then it will be considered as a combination under section 5. If an enterprise has been acquired, and is a part of a group, has assets of more than INR 4000 crores or a turnover of INR 12000 crores, then it would be considered as a combination under section 5. But on 7th March, 2024, the threshold limits have been increased as well as the limits for De Minimis Exemption have been mentioned as assets of not more than INR 450 crores or turnover of not more than INR 1250 crores.[12] The threshold limits have been increased to INR 2500 crores for the enterprise level and INR 10,000 crores for the group level, and a turnover of more than INR 7500 crores for the enterprise level and INR 30,000 crores for the group level.[13]

ii. The Core Problem - Threshold-Based Gap

If we analyse Section 5 of the Competition Act, 2002, combination is defined only in the form of large numbers, which is in-turn sufficient for a big company's merger or a factory level merger but it wouldn't even notice when a big company will acquire a small tech company. Even that company has very negligible user base, no big resources or assets but it has a potential to grow in a few years. This means that during the old threshold, these killer acquisitions never went to the CCI and notified to them as these were well below the threshold limits. There is a large gap between laws governing a Rs. 5000 crores transaction and transaction worth few crores. Another challenge was the CCI's conventional method of merger assessment, even when a deal was under scrutiny. The Act's merger review process has typically concentrated on identifying the appropriate market and assessing the parties' current standing within it. This method is more appropriate for identifying current or likely immediate competitive harm than for evaluating potential long-term threats.

That creates a particular problem in the case of killer acquisitions. At the time of the transaction, the target might not be a significant rival. Instead, the worry is that it might grow into a major rival in the future if left on its own. However, the CCI was not given clear framework by Indian competition law to handle this type of emerging competition as a separate source of concern. To put it differently, the regulator's ability to challenge a transaction on the grounds that the target might have developed into a significant rival after a few years was constrained.

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[12] Notification S.O. 1131(E), Competition Commission of India, 7 March 2024 <https://www.cci.gov.in/public/combination/legal-framwork/notifications/details/18/0>accessed 22nd July, 2026

[13] 'Filing of Combination Notices' Competition Commission of India, <https://www.cci.gov.in/combination/combination/filing-of-combination-notice/introduction>accessed 22nd July, 2026

Therefore, the challenge was not just determining the target's place in the market, but also estimating what that position might have changed in the absence of the acquisition.

iii. The Data Blindspot

The Competition Act of 2002 was passed years before data became a commodity for which firms are being bought. One interesting clause in the Competition Act of 2002 was Section 20(4), which talked about the factors that will be considered by the Commission when investigating whether an agreement causes an appreciable adverse effect on competition. Market share is one of the factors listed, followed by barriers to entry. Then comes countervailing power. The final one among them is vertical integration. As for data, it is not mentioned at all there.[14] Then, in Section 19, which talks about dominance, subsection 4 also makes no mention of data. According to Section 20(4), the other factors that the Commission shall consider when investigating whether an agreement causes an appreciable adverse effect on competition include market share, barriers to entry, countervailing power, and vertical integration. Market share, in this case, cannot be the factor. A target with insignificant turnover may contain behavioural records on millions of users. This could raise the acquirer's entry costs once the data is combined with the acquirer's datasets. The European Commission has recognised this most clearly in its market studies; however, a market study is not a statutory hook. Google's acquisition of Fitbit was cleared after Google consented to keep the health data in a separate silo for a long time.[15] Indian merger control has extracted no comparable commitment, and has addressed data only after the fact, through Section 4.[16]

iv. CCI's Track Record on Tech Acquisitions

A lot of significant technology acquisitions have happened since the establishment of the Commission. But the actual record of what the Commission has done with those acquisitions is very short. Even though the Commission approved Walmart's acquisition of Flipkart under Section 31(1) by an order dated 8 August 2018, the order was brief and mainly structural, finding no vertical overlap since the FDI Policy outrightly prevented Walmart from operating

[14] Market Study on E-Commerce in India: Key Findings and Observations, Competition Commission of India <https://www.cci.gov.in/images/marketstudie/en/market-study-on-e-commerce-in-india-key-findings-and-observations1653547672.pdf> accessed 4th September 2026

[15] Case M.9660 Google/Fitbit, Commission Decision of 17 December 2020; European Commission, 'Commission clears the acquisition of Fitbit by Google, subject to conditions' (Press Release IP/20/2484, 17 December 2020) <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2484> accessed 4th September 2026

[16] In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users, Suo Motu Case No. 01 of 2021, Competition Commission of India, order dated 18 November 2024

in B2C retail.[17] It also did not address the transfer of data to a global retailer. When the clearance was challenged, the Appellate Tribunal rejected the challenge, recording that the combination did not eliminate a significant player in the relevant market, which is precisely what killer acquisitions are supposed to do.[18]

The Commission noted Google's presence as a competitive constraint when evaluating Facebook's acquisition of 9.99 percent of Jio Platforms, which was approved on June 24, 2020, almost exclusively based on market shares. Instead of treating the planned WhatsApp and JioMart integration as a dataset pooling, it was viewed as a business partnership. Four years later the same regulator penalised Meta Rs. 213.14 crore for exactly that kind of data a remedy the Tribunal partly undid. The Commission has never blocked or materially modified a technology acquisition.[19]

RECENT REFORMS: HOW FAR HAS INDIA COME?

1. The Deal Value Threshold: Closing India's Most Visible Gap

The most significant amendment to the Indian merger control regime under the Competition (Amendment) Act, 2023[20], is the addition of a 'deal value threshold' ('DVT') in the Competition Act, 2002 ("CPA"). The definition of substantial business operations in India" was introduced through the notification of the Ministry of Corporate Affairs (MCA) [21]on 10 September 2024 in conjunction with the Competition Commission of India (Combinations) Regulations, 2024 [22](the 'Regulations') and would require prior approval from the CCI for any transaction where the value of the transaction exceeds ₹2,000 crore, irrespective of the assets or turnover of the target enterprise. A start-up, with virtually no sales or revenue, can no longer avoid the Act's traditional financial tests just because they are not making them, but because what the acquirer is willing to pay is what matters. This is directly on the point of the threshold gap discussed in Section III: at least in principle, acquisition of a pre-revenue digital firm of multi-thousand-crores is now in sight to the regulator.

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[17] Wal-Mart International Holdings, Inc., Combination Registration No. C-2018/05/571, order dated 8 August 2018, Competition Commission of India

[18] Confederation of All India Traders v Competition Commission of India, Competition Appeal (AT) No. 16 of 2018, NCLAT

[19] Combination Registration No. C-2020/06/747, Competition Commission of India; 'CCI approves acquisition of 9.99% stake in Jio Platforms by Jaadhu Holdings LLC' (Press Release No. 15/2020-21, 24 June 2020)

[20] Competition (Amendment) Act, 2023

[21] Notification (Sept. 9, 2024) (India) (bringing the deal value threshold into force from Sept. 10, 2024)

[22] Competition Commission of India (Combinations) Regulations, 2024;

The 2023 Amendment also made stronger the regime given its implications for the killer acquisition. The meaning of the term 'control' under Section 2 was expanded to include "material influence" and not just de jure voting or board control, thus making arrangements to embed Big Tech within a target without a full merger filing 'control' under CCI[23]. Time-lines shortened and 'gun-jumping' tightened, so that parties cannot merge operations until the approval is granted - a change of particular importance given the practical difficulty, discussed in Section VI, of reversing integration once it has occurred.

However, the design of the threshold has an unresolved issue because no empirical study or regulatory impact assessment has been made public that justifies the investment of ₹2,000 crore. The figure seems to be a reflection of Germany's own judgment on how it measures up against the rest of the world's first deal-value test, but there's not a single published reason to believe that ₹2,000 crore is the right number for the growing Indian start-up ecosystem where the classic "kill zone" acquisitions where a dominant platform absorbs a fledgling rival at an early funding round usually happen far below that level. A threshold that traps WhatsApp-style acquisitions, but not the smaller, earlier acquisitions that are most troubling to the innovation economists is only a half solution.

2. **The Draft Digital Competition Bill, 2024: An Unfinished Second Front**

The second round of reforms takes a different tack at the same deficit. In February 2023, the Committee on Digital Competition Law (CDCL) of the Ministry of Corporate Affairs (MCA) had released its report and a draft Digital Competition Bill on 12 March 2024, recommending India's first-ever ex-ante regulatory framework on digital markets. [24]The Bill would put large platforms under a new designation as "Systemically Significant Digital Enterprises" ("SSDEs") and would impose obligations on those platforms up front, rather than after the fact, as the existing Act does, having to show that a harm has occurred in the competition. In theory, this ex-ante reasoning is well applicable to killer acquisitions as it does not require the CCI to conclude that an actual transaction caused harm.[25] The Bill in practice, however, is geared towards regulating the ongoing conduct of an SSDE, rather than acquisition control; it provides

[23] Competition Act, 2002, § 2(za), as amended by Competition (Amendment) Act, 2023, § 2 (widening "control" to include "material influence").

[24] Ministry of Corporate Affairs, Report of the Committee on Digital Competition Law 1 (Mar. 12, 2024) [hereinafter CDCL Report].

[25] CDCL Report, supra note 4, at ch. 2 (contrasting the existing ex-post framework under the Competition Act, 2002 with the proposed ex-ante regime for Systemically Significant Digital Enterprises).

additional powers to Section 5 which are not merger-notification thresholds[26]. Most importantly, that the Bill is still a bill. Even up to mid-2026, the Ministry has not advanced to introduce the draft 2024 Bill in Parliament [27]and is currently going through the submissions from stakeholders again, without a specific timeline. year in which the ex-post Competition Act, 2002 remains the only operative law against killer acquisitions in India. Each passing year will only be another year where India has no other law in effect that can curb killer acquisitions other than the ex-post Competition Act, 2002.

3. **The E-Commerce Market Study: Diagnosis Ahead of Enforcement**

The third reform initiative has come before the 2023 Amendment, but it shows the same diagnosis enforcement imbalance. The CCI's January 2020 Market Study on E-Commerce in India singled out some common competition grievances, including deep discounting, self-preferencing, platform-parity clauses and exclusive seller arrangements[28]. The study did lead to a concrete enforcement action, in the form of an investigation into the discounting and exclusivity practices of Amazon and Flipkart in Delhi Vyapar Mahasangh v. Flipkart Internet Pvt. Ltd., [29]but the CCI's main institutional action was that it recommended voluntary self-regulation instead of binding rules. Interestingly, no such market investigation is known to have been conducted specifically with regard to the acquisition of emerging digital rivals; the CCI's most sophisticated diagnostic effort has been in relation to conduct, rather than the killer-acquisition issue which this paper tackles.

Comparative Analysis:

i. European Union

Article 22 of the EU Merger Regulation, a referral mechanism that allows Member States to request that the Commission investigate a concentration that impacts trade between States and jeopardizes competition in their territory, was the first step in the European Union's response to below-threshold acquisitions. In order to achieve killer acquisitions, the Commission

[26] See Gaurav Pathak, The Indian Draft Digital Competition Bill and Report: A Critical Perspective, J. Antitrust Enforcement (2025) (arguing the draft Bill is oriented toward behavioural obligations rather than acquisition control).
[27] Ministry of Corporate Affairs, Rajya Sabha Unstarred Question No. 2944 (answered Aug. 19, 2025) (status of the Draft Digital Competition Bill);
[28] Competition Commission of India, Market Study on E-Commerce in India: Key Findings and Observations (Jan. 8, 2020).
[29] In re Delhi Vyapar Mahasangh v. Flipkart Internet Pvt. Ltd., Case No. 40 of 2019, CCI Order under § 26(1) (Jan. 13, 2020).

declared in 2021 that it would accept such referrals even if the deal fell below every national threshold. When Meta acquired Customer, a customer relationship management company, the system was first used extensively. Although the transaction was too small to meet EU turnover thresholds, Austria referred it, and nine other States followed suit. Only after Meta promised to grant rival CRM providers non-discriminatory access to WhatsApp, Messenger, and Instagram messaging channels for ten years did the Commission approve it. Thus, a deal that failed to capture a threshold resulted in a legally binding remedy.[30]

Since then, that strategy has been curtailed. The Court of Justice ruled in Illumina/Grail in September 2024 that a Member State cannot refer a concentration that it lacks the authority to review under its own legislation. As a result, the referral rulings that the Commission had relied upon were revoked. Only in cases where a national regime has already taken action is the referral route currently accessible.[31] The Digital Markets Act, which mandates that designated gatekeepers notify the Commission of any planned acquisition in the digital sector, regardless of value or turnover, remains unaltered. The acquirer's identity, not the target's size, is what initiates notification.[32]

The lesson for India is that judicially rigid alternatives are a bad starting point and that thresholds by themselves cannot close the gap. The regulator has visibility without the jurisdictional vulnerability that undermined the European referral experiment thanks to a statutory obligation on designated large platforms to report all acquisitions.

ii. Germany

Through Section 35(1a) of the Act against Restraints of Competition, Germany established the first transaction value threshold in history in 2017. This law requires notification in cases where the target has significant operations in Germany and the consideration exceeds EUR 400 million, even if the turnover tests are not satisfied. The German experience is the most instructive because this is the direct ancestor of the deal value threshold that India adopted through the 2023 amendment. It leads to two conclusions. The first relates to calibration. The Federal Cartel Office interpreted the threshold broadly, and parties responded with a large number of purely precautionary filings, a practice that the Federal Court of Justice was still

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[30] Case M.10262 Facebook/Kustomer, Commission Decision of 27 January 2022; European Commission, 'Mergers: Commission clears acquisition of Kustomer by Meta, subject to conditions' (Press Release, 27 January 2022) <https://ec.europa.eu/commission/presscorner/detail/en/ip_22_652> accessed 4th September 2026

[31] Illumina Inc v European Commission and Grail LLC v European Commission (Joined Cases C-611/22 P and C-625/22 P) ECLI:EU:C:2024:677, judgment of 3 September 2024

[32] Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector (Digital Markets Act), art 14

clarifying as recently as June 2025. The threshold was meant to capture a small number of strategically significant deals. In addition to under-capturing or over capturing, a threshold set without a clear local nexus creates uncertainty that is not advantageous to either the acquirer or the regulator.[33]

The second is about what goes beyond thresholds in German law. Businesses that depend on small and medium-sized enterprises can be held accountable even in the absence of dominance in the traditional sense thanks to Section 20 of the Act, which extends liability to undertakings with relative or superior market power. The idea acknowledges that a platform's behaviour is frequently detrimental due to dependence rather than market share. There are two lessons for India. India borrowed Germany's threshold, but it hasn't yet addressed the more difficult questions of whether the substantial business operations test provides parties with enough guidance or whether Rs. 2,000 crore is appropriate for a market where startup valuations are lower than in Europe. Additionally, India lacks the equivalent of relative market power, leaving smaller Indian companies reliant on major platforms with no way out unless dominance can be demonstrated.

CRITICAL ANALYSIS: IS INDIA TRULY PREPARED?

In a sudden shift from the asset and turnover regime of the past, it has become possible for India to see high dollar transactions of pre-revenue companies, as shown in Section IV. Sure, that's real progress. However, visible is not governable and three structural deficits (definitional, doctrinal and institutional) demonstrate that the framework is incomplete, not merely unfinished, as it is far from complete.

The problem is that the deal value threshold is not designed to have a definitional gap. A platform structuring a purchase just under the bright-line, legislatively fixed amount of ₹2,000 crore will face very little extra level of scrutiny because most killer acquisitions take place at valuations much lower than that. It is instructive to compare the European Union's now disavowed approach here, particularly in light of the comparative lessons learned in Section V. The European Commission took years to use Article 22 of the EU Merger Regulation as a "discretionary corrective mechanism" to capture acquisitions that fall below the thresholds for

[33] GWB, s 35(1a), introduced by the Ninth Amendment, 2017, Guidance on Transaction Value Thresholds for Mandatory Pre-merger Notification (January 2022) <https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitfaden/Guidance_Transaction_Value_Thresholds.pdf?__blob=publicationFile&v=4> accessed 4th September 2026

example, Facebook's acquisition of Cutometer. European Commission did not have a bright line rule, but used Article 22 of the EU Merger Regulation as a "discretionary corrective mechanism" to ensnare acquisitions below the thresholds, such as Facebook's acquisition of Kustomer. [34]In September 2024, the Court of Justice of the European Union ruled that whole approach was ultra vires, meaning that it was not expressly permitted by the EU legislation but was a matter for the EU legislature to decide on.[35] The opposite, legislative, course was followed by the 2023 Amendment to the Indian Constitution, and that is institutionally more legitimate than the Commission's ad hoc referral practice, which was vulnerable because it didn't have a lawful basis. The Indian threshold, however, is not just durable, it is blunt: whereas a discretionary mechanism could be corrected on a case-by-case basis, it cannot be amended in the future or delegated to rule making.

The doctrinal deficit is the lack of any notion of nascent or potential competition. However, CCI review does not take into account the markets as they would develop, rather as they are. But even after the amendment, CCI review asks whether a combination is likely to lead to an appreciable adverse effect on competition in the markets as they are, not as they would have developed. This is the one most impactful idea that is missing from Indian law: an attack on a competitor without competition is, by definition, a killer acquisition.

Two recent orders illustrate the institutional deficit, rather than simply state it. The CCI recently indicated that it will hold data practices to be a competition issue, in November 2024, it penalized Meta for using its dominance over WhatsApp to coerce data sharing in line with its 2021 privacy policy. [36]However, the order also reveals and exposes the flaws in this theory of abuse of dominance because it required years of investigation to come up with the result, it can only be used in the context of a dominant incumbent, and the NCLAT stayed the order within months for appeal. Data concerns can be litigated after crystallization but can't be weighed at the acquisition stage before a start-up is absorbed. From the opposite side, the judgment rendered by the Supreme Court in the Amazon Future Coupons case reaffirms the same

[34] Case M.10262 – Facebook/Kustomer, Eur. Comm'n Referral Decision (May 12, 2021) (accepting Article 22 referral requests from ten Member States over a deal that fell below EU and national notification thresholds).
[35] Illumina Inc. & Grail LLC v. European Commission, Joined Cases C-611/22 P & C-625/22 P, ECLI:EU:C:2024:677 (Sept. 3, 2024) (annulling the Commission's acceptance of Article 22 referrals for transactions not meeting national or EU thresholds).
[36]In re Meta Platforms, Inc. & WhatsApp LLC, CCI Order (Nov. 18, 2024) (imposing a penalty of ₹213.14 crore for abuse of dominant position under §§ 4(2)(a)(i), 4(2)(c) and 4(2)(e) of the Competition Act, 2002); WhatsApp LLC v. CCI, NCLAT Order (Jan. 2025) (staying the five-year data-sharing prohibition and 50% of the penalty pending appeal).

principle: even if the CCI wanted to review a previously approved combination after discovering explosive internal communications, it did not have the power to keep an approval "in abeyance" or to require that the combination be refiled after it closed.[37] The Court's emphasis on procedure and predictability, along with its refusal to come to any conclusions regarding the penalty based on "insinuation" and a lack of specific evidence, further limits the ability of the CCI to work around holes in the law. [38]Taken together, these two orders reveal a regulator with a very limited and an ex-post and procedurally frail channel in which it can operate the kind of channel that will be eliminated by a killer acquisition, in which the harm is the loss of a possible competitor that has yet to be tested.

The Digital Competition Bill was designed to fill this gap by regulating services ex-ante. It remains a paper tiger, and the government says it is still consulting stakeholders on the matter as of 2026, though it has been well after 2024 draft that it was considered. Its continuing lack of enactment, more than two decades after 2024 draft, means it continues to be a theoretical benefit, and each acquisition since then has been reviewed against a framework this Part has revealed as structurally deficient. India's answer to its own research question is not just a simple "no" or "yes", but a real and legislated response to a real gap, but a country that is also not quite ready to see killer acquisitions coming, nor quite ready to stop them.

RECOMMENDATIONS

The following recommendations directly address the gaps identified in Sections III and VI, and are specifically not representational but rather narrow. First, adjust the threshold for the value of the deal for digital acquisitions, especially. The MCA must instead, if it does not wish to stall the amendment of Section 5 again (as it did in the last Bill in 2022 to trigger with a notification and has not done so yet till 2024), use the power it has in its rule making to specify a lower threshold for acquisitions (by those platforms already identified as dominant, say, between ₹500 crore and ₹1,000 crore) without the rest of the threshold being lowered. To place the number in subordinate legislation, instead of the Act, would give the opportunity to recalibrate as evidence evolves, as per the rigidity that was found in Section VI.

[37] Amazon.com NV Investment Holdings LLC v. Competition Commission of India, Supreme Court of India (May 27, 2026) (setting aside CCI's Dec. 17, 2021 order and the NCLAT's June 13, 2022 judgment; holding that the Act confers no power to keep a combination approval "in abeyance" or compel a fresh Form II filing after unconditional approval under § 31(1)).

[38] Id. (holding the CCI's action was contrary to the jurisdictional limitation in the proviso to § 20(1) of the Competition Act, 2002, and that penal findings under §§ 44–45 require specific findings of material falsity and knowledge, not "insinuation" or "lack of candour").

Second, use new Combination Regulations to establish an emerging competition criterion that gives the CCI the opportunity to account for counterfactual harm – what the target would likely have been without the acquisition. As the most significant of all recommendations in this paper, this follows from the doctrinal gap which underlies all other gaps; this does not imply that Germany's concept of relative and superior market power in Section 20 GWB is a perfect transplant, but it does indicate that competition law does not require proof of existing dominant market power to recognise power over dependent or emerging rivals. [39]

Third, understand that data collection is not just another abuse-of-dominance claim that is asked many years down the road. Data should be used as a competition parameter, and the CCI should use its own WhatsApp order as an example to see that it already has the analytical tools to do so; these tools need to be brought upstream, to merger review, not left to conduct-based enforcement.

Fourth, speed up Digital Competition Bill. Parliament should consider enacting a narrower, acquisition-focused bill, containing only the notification obligations to SSDE, first versus waiting for consensus on a comprehensive ex-ante conduct code.

Fifth, develop the technical and procedural capability of the CCI in partnership. In the Amazon–Future Coupons judgment, the court recognized that economic advice is not enough: measures must also be sufficiently "procedural" to pass the muster of appellate courts. A mission-oriented Digital Markets Division comprising economists and technologists along with dedicated legal expertise for combination enforcement would be a better idea, as ambitious interventions in recent years have twice failed due to a lack of a solid statutory/ procedural basis.

CONCLUSION

Can India's competition law keep pace with preventing, monitoring and finding 'killer acquisitions' by Big Techs? The truth is: not yet, but closer than it was 2 years ago. The Competition (Amendment) Act, 2023 is indeed a legitimate, enacted success for the first time, it is no longer the turnover of a start-up that determines whether it is subject to regulatory review when it comes to an acquisition by a larger entity, but rather its value to that acquirer. It

[39] Gesetz gegen Wettbewerbsbeschränkungen [GWB] [Act Against Restraints of Competition], § 20 (Ger.) (relative and superior market power).

does not just make things look good, it is the closing of the one most obvious gap found in Section III of this paper.

However, the protection provided by law is not necessarily matched by real protection. Three structural issues remain unaddressed: Indian law contains no rule on nascent and/or potential competition, such that CCI can stop a deal because the target would have become a competitor in years to come; data accumulation is yet to be “appreciated” at the time of acquisition, but instead just litigated years later as abuse of dominance; and the Digital Competition Bill, which this paper advocates for as the ex-ante architecture India needs, is unenacted and has no fixed deadline.

The start-up ecosystem in India the biggest in the world simply can't afford to wait and see. Under the current framework, no acquisition assessed has been evaluated without a concept that can be found in the international literature for years: the concept of competitive harm preceding competitive proof. The Digital Competition Bill, if passed with acquisition provisions instead of conduct rules, is the most obvious way to fill that void in India. The Competition Commission of India has to become a regulator that can assess aggregations that it can measure rather than one that can predict aggregations it cannot yet see; and the clock is ticking on that change, with each acquisition that happens without its knowledge.