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DEAL VALUE THRESHOLD UNDER INDIAN MERGER CONTROL: A NEW FRONTIER FOR CCI REGULATION OF M&A

~TATHAGAT MEHTA

ABSTRACT

Indian merger control has traditionally relied on asset and turnover based thresholds to determine whether an M&A transaction requires regulatory scrutiny or not. While these measures work reasonably well for established businesses, they can miss acquisitions involving high-value, asset light or innovation driven enterprises whose competitive significance is not reflected in current revenues or assets. This gap is particularly relevant in the digital and start up markets. The Competition (Amendment) Act, 2023 introduced the Deal Value Threshold (“DVT”) under Section 5(d) of the Competition Act, 2002. A transaction is brought within this framework where its value exceeds ₹2,000 crore and the target has substantial business operations in India (“SBOI”).

This paper examines the rationale, operation and emerging challenges of the DVT. It analyses the statutory framework governing transaction value and SBOI, with particular attention to contingent consideration, non-cash components, interconnected transactions and digital businesses. The paper argues that DVT addresses a genuine weakness in traditional merger control, but also creates new questions of valuation and jurisdictional certainty. These issues matter. They can affect both, the regulatory compliance as well as transaction timelines. Drawing on Indian regulatory materials, comparative merger control practice and competition law literature, the paper recommends clearer valuation guidance, greater certainty on SBOI, periodic review of the ₹2,000 crore threshold, illustrative guidance and stronger use of pre filing consultation. The objective should be simple: effective competition enforcement without any unnecessary uncertainty for legitimate M&A.

1. INTRODUCTION

1.1. BACKGROUND

The merger control in India has traditionally relied upon the economic size of the enterprises involved. Under Section 5 of the Competition Act, 2002, the

combinations may be identified through prescribed asset and turnover thresholds, assessed at the enterprise or group level. A transaction falling within these prescribed thresholds is then subjected to the CCI's merger control framework, under which the Competition Commission of India ("CCI") examines whether the transaction causes or is likely to cause an appreciable adverse effect on competition ("AAEC").¹

This framework works reasonably well where the target already has substantial assets or revenue. But modern M&A has complicated this picture. A technology start up may have limited assets and small current turnover while commanding a very high valuation because of its users, data, intellectual property, network effects or future competitive potential. The numbers may look small but the business may not be. This creates a regulatory gap.

1.2. REGULATORY GAP

The difficulty is particularly visible in technology, digital and innovation driven markets. New businesses may operate at a loss while attracting substantial investment because their value lies in the growth potential rather than the present revenue. A pharmaceutical or technology company may similarly possess valuable intellectual property or innovative products without generating sufficient turnover to trigger traditional thresholds.

The concern, therefore, is not simply that some transactions are large. It is that transaction value may reveal competitive significance that assets and turnover fail to really capture. International experience has also recognised this problem. Germany, for example, introduced a transaction value threshold in 2017 partly to bring high value acquisitions of businesses with comparatively low turnover within the merger scrutiny.²

India confronted the same concern while reforming its merger control framework. As the CCI explained during the legislative reform process, new age businesses can acquire significant market positions through their users, data, growth and network effects despite having relatively limited assets or turnover.³

1.3. INTRODUCTION OF THE DEAL VALUE THRESHOLD

¹ Competition Act, 2002, No. 12 of 2003, §§ 5–6 (India); Competition Commission of India, *Frequently Asked Questions & Answers Relating to Combinations* (2025).

² Org. for Econ. Co-operation & Dev. [OECD], *G7 Inventory of New Rules for Digital Markets: 2024 Update* 15 (2024) (noting Germany's introduction of a value-based merger threshold in 2017 to address acquisitions involving businesses with low turnover but significant competitive potential).

³ Competition Commission of India, *Speech on the Competition (Amendment) Bill, 2023*, at 2–3 (May 2023) (explaining the rationale for introducing a ₹2,000 crore deal value threshold for new-age businesses).

The Competition (Amendment) Act, 2023 introduced a deal value threshold (“DVT”) as an additional jurisdictional trigger under Section 5 of the Competition Act. This provision applies where the value of the transaction exceeds ₹2,000 crore and the target has substantial business operations in India (“SBOI”).⁴

The framework was subsequently operationalised through the Competition Commission of India (Combinations) Regulations, 2024. The Regulations provides detailed rules for determining transaction value and identifying SBOI, including specific considerations for digital services, Indian turnover and gross merchandise value.⁵

The DVT therefore represents an important shift. Merger control is no longer concerned only with what the parties currently own or earn but also it can examine what the market considers the target to be worth.

1.4. RESEARCH QUESTIONS

Against this background, the paper examines three questions:

1. Why was the DVT introduced into the Indian merger control?
2. Does the present DVT framework effectively capture transactions that traditional thresholds may miss?
3. Does the framework provide sufficient certainty for businesses while protecting competition?

The paper particularly examines whether the transaction value is an appropriate proxy for competitive significance and whether the SBOI requirement adequately limits the CCI's jurisdiction to transactions with a meaningful Indian nexus.

1.5. METHODOLOGY AND SCOPE

The paper adopts a doctrinal and analytical methodology. It examines the Competition Act, 2002, the Competition (Amendment) Act, 2023, the Competition Commission of India (Combinations) Regulations, 2024, relevant CCI orders and official guidance. It also considers legislative materials, the CCI's regulatory statements, OECD materials and academic literature on transaction value thresholds and merger control in the digital markets.

⁴ Competition Act, 2002, No. 12 of 2003, § 5(d) (India), as amended by the Competition (Amendment) Act, 2023.

⁵ Competition Commission of India (Combinations) Regulations, 2024, reg. 4, Gazette of India, Sept. 10, 2024; Competition Comm'n of India, *General Statement on the Competition Commission of India (Combinations) Regulations, 2024*, at 4–5 (2024).

The analysis focuses on the DVT's operation in Indian M&A, particularly its application to high value, asset light and innovation driven businesses. It evaluates both sides of the framework: its ability to close an important enforcement gap and the uncertainty it may create for transaction parties.

The central argument is simple. The DVT addresses a genuine weakness in traditional merger control, but its effectiveness ultimately depends on how predictably transaction value and Indian business operations can be assessed. That is where the real regulatory challenge begins.

2. TRADITIONAL MERGER-CONTROL THRESHOLDS AND THEIR LIMITATIONS

2.1. ASSET AND TURNOVER THRESHOLDS

India's merger-control regime has traditionally relied upon the economic size of the enterprises involved. Section 5 of the Competition Act, 2002 identifies a transaction as a “combination” when prescribed asset or turnover thresholds are satisfied. These thresholds operate at both the enterprise and the group levels, and considers the relevant Indian and worldwide financial position of the parties.⁶ The framework therefore asks a relatively straightforward question: how large are the businesses involved?

The present thresholds were revised in 2024. At the enterprise level, the relevant Indian thresholds are at ₹2,500 crore in assets or ₹7,500 crore in turnover. At the group level, the thresholds are at ₹10,000 crore in assets or ₹30,000 crore in turnover, subject to the applicable worldwide and the Indian components.⁷ Importantly, satisfaction of any one applicable threshold is sufficient to bring a transaction within the statutory definition of a combination, subject to the exemptions.⁸

These thresholds serve as an important screening function. They provide an objective jurisdictional test and reduce unnecessary scrutiny of economically insignificant transactions. But they have an obvious limitation. Size is not always the same as the competitive significance.

⁶ Competition Act, 2002, No. 12 of 2003, § 5 (India).

⁷ Competition Commission of India, *Frequently Asked Questions & Answers Relating to Combinations* (2025); Ministry of Corporate Affairs, Notification No. S.O. 1130(E), Gazette of India, Mar. 7, 2024.

⁸ Competition Commission of India, *Frequently Asked Questions & Answers Relating to Combinations* (2025).

2.2. THE “SMALL TARGET” PROBLEM

The limitation becomes clearer in acquisitions that involves young or innovative businesses. A start up may have few physical assets and little turnover while being valued up to several thousand crores. This is common in technology and digital markets, where value may lie in the data, intellectual property, users, algorithms, network effects or future growth rather than current revenue.

Such businesses can therefore fall below traditional asset and turnover thresholds despite possessing the substantial competitive potential. The problem is particularly relevant where an established firm acquires a young business that could develop into a meaningful competitor.

The issue is not merely a theoretical one. The U.S. Federal Trade Commission's retrospective examination of technology platform acquisitions found that a significant proportion of acquired firms were relatively young, illustrating how acquisitions involving developing businesses may occur before conventional measures of economic size become substantial.⁹

Traditional thresholds consequently create a timing problem. By the time revenue reflects a competitive importance, the competitive opportunity may already have disappeared.

2.3. ACQUISITION OF COMPETITIVE POTENTIAL

This brings the analysis beyond present economic size. Competition law is concerned with the future competitive conditions as well.

A business does not need substantial current turnover to constrain an incumbent. A rapidly growing digital platform, an innovative pharmaceutical company or a technology start up may represent a future competitive threat even while generating modest revenue. Its value may therefore reflect expectations about the future competition rather than existing financial performance.

The transaction value approach attempts to capture this gap precisely. Germany's Federal Cartel Office, for example, explains that its transaction value threshold can capture acquisitions of businesses with relatively low domestic turnover but substantial domestic operations and significant competitive potential.¹⁰

The underlying idea is fairly simple. Purchase price can sometimes reveal what traditional accounting figures cannot. It may indicate that the acquiring firm is

⁹ Fed. Trade Comm'n, *Non-HSR Reported Acquisitions by Select Technology Platforms, 2010–2019* (2021).

¹⁰ Bundeskartellamt, *Obligation to Notify a Merger and Key Aspects of Merger Control*.

paying not for existing revenue, but for the technology, users, data, innovation or the possibility of future market expansion.

That does not mean every high value transaction is anticompetitive in nature. It means that some high value transactions deserve to be examined even when the conventional thresholds are not met.

2.4. INTERNATIONAL DEVELOPMENTS

India is not alone in responding to this problem. Germany introduced a transaction value threshold in 2017 for acquisitions where the consideration exceeds €400 million and the target has a substantial domestic operations despite relatively low German turnover.¹¹ Austria adopted a similar mechanism, with a €200 million transaction value threshold.¹² Both regimes were designed in part to address acquisitions of businesses with significant competitive potential but with limited current turnover.

The European Union has traditionally relied on the turnover based jurisdictional thresholds under the EU Merger Regulation.¹³ However, the Commission's approach has increasingly recognised that transactions involving innovative or fast growing businesses may require scrutiny even where the traditional turnover thresholds are not met, including through the use of Article 22 referrals.¹⁴

The United States follows a different model. Under the Hart Scott Rodino Act, certain transactions must satisfy both size of the transaction and size of person requirements before premerger notification is required. The transaction value element is therefore already embedded in the U.S. notification framework, although it operates differently from India's DVT.¹⁵

These approaches are not identical. Nor should they be treated as interchangeable. But they point towards the same concern: traditional financial thresholds may not always capture the competitive importance of modern, asset light businesses. India's introduction of the Deal Value Threshold is therefore part of a broader shift in the merger control, from asking only how large a business currently is to asking what the acquisition may represent for the future competition.

¹¹ Gesetz gegen Wettbewerbsbeschränkungen [GWB] § 35(1a) (Ger.); Bundeskartellamt, *Obligation to Notify a Merger and Key Aspects of Merger Control*.

¹² Kartellgesetz 2005 [KartG] § 9(4) (Austria) (current version); Bundeskartellamt & Bundeswettbewerbsbehörde, *Joint Guidance on the New Transaction Value Threshold in German and Austrian Merger Control* (2018).

¹³ Council Regulation 139/2004, art. 1, 2004 O.J. (L 24) 1 (EC).

¹⁴ European Commission, *Commission Guidance on the Application of Article 22 of the Merger Regulation to Certain Categories of Cases* (2021).

¹⁵ 15 U.S.C. § 18a; Fed. Trade Comm'n, *Premier Notification and the Merger Review Process*.

3. THE LEGAL FRAMEWORK OF THE DEAL VALUE THRESHOLD

3.1. SECTION 5(d) OF THE COMPETITION ACT

The Deal Value Threshold (“DVT”) was introduced through the Competition (Amendment) Act, 2023 and became operational on September 10, 2024. Section 5(d) creates an additional jurisdictional test for the combinations. A transaction falls within this provision where the value of the transaction exceeds ₹2,000 crore and the enterprise being acquired, taken under control, merged or amalgamated has substantial business operations in India (“SBOI”).¹⁶

The provision is significant because it does not depend on the financial size of the parties in the traditional sense. A transaction may fall below the asset and turnover thresholds and may still require notification if it satisfies Section 5(d). The DVT is therefore an additional route into merger control, not a replacement for the existing thresholds.¹⁷

This is a meaningful change in the Indian competition law. The focus shifts, at least partly, from the size of the business to the economic value attached to the transaction.

3.2. WHAT CONSTITUTES “VALUE OF THE TRANSACTION”?

The DVT would have limited practical value if the parties could manipulate the purchase price by placing consideration in separate agreements or postponing payments. The 2024 Combination Regulations therefore adopts a deliberately broad approach.

Regulation 4(1) treats “value of transaction” as including every form of the valuable consideration, whether direct or indirect, immediate or deferred, and in cash or otherwise.¹⁸ It may include separately agreed consideration for covenants, undertakings, obligations or restrictions; interconnected transactions; certain payments under arrangements relating to or incidental to the transaction; call options; and estimated contingent future payments.¹⁹

¹⁶ Competition Act, 2002, No. 12 of 2003, § 5(d) (India), as inserted by the Competition (Amendment) Act, 2023; Competition Comm'n of India, *Frequently Asked Questions & Answers Relating to Combinations* 12–13 (2025), Q. 33.

¹⁷ Competition Comm'n of India, *Frequently Asked Questions & Answers Relating to Combinations* 1–2, 12–13 (2025), Qs. 1–2, 33.

¹⁸ Competition Comm'n of India (Combinations) Regulations, 2024, reg. 4(1) (India).

¹⁹ *Id.*; Competition Comm'n of India, *Frequently Asked Questions & Answers Relating to Combinations* 13–14 (2025), Q. 34.

This approach is particularly important in sophisticated M&A transactions. Consideration may not simply be a fixed amount paid at the time closing. There may be earn-outs, deferred consideration, technology arrangements, licensing agreements or future payments. The Regulations attempt to capture the economic substance of these arrangements rather than allowing the transaction value to be artificially divided.

The treatment of interconnected transactions is equally important. Where several steps form part of the same transaction, their value may need to be considered together.²⁰ Otherwise, parties could potentially structure one commercial acquisition through multiple documents and argue that none of them individually crosses the threshold.

The CCI's approach is therefore intentionally broad. It looks beyond the headline purchase price.

3.3. SUBSTANTIAL BUSINESS OPERATIONS IN INDIA

The ₹2,000 crore threshold alone is insufficient. Section 5(d) also requires the target to have substantial business operations in India. This provides the DVT with an Indian nexus.

Regulation 4(2) establishes three alternative tests. First, for digital services, the target must have at least 10% of its global business or end users in India. Second, its Indian gross merchandise value ("GMV") must constitute to at least 10% of its global GMV and exceed ₹500 crore. Third, its Indian turnover must constitute at least 10% of its global turnover and exceed ₹500 crore.²¹ The ₹500 crore requirement does not apply to the digital user test.²²

The structure is significant. A digital business may have relatively little Indian turnover while having a substantial Indian user base. The Regulations therefore recognise that users themselves may represent an important indicator of commercial presence in digital markets.

The SBOI requirement also prevents the DVT from becoming a purely global test. The transaction must have a meaningful connection with the Indian commercial activity.

²⁰ Competition Comm'n of India (Combinations) Regulations, 2024, regs. 4(1)(b), 9(4)–(5) (India); Competition Comm'n of India, *Frequently Asked Questions & Answers Relating to Combinations* 13–14, 74–75 (2025), Qs. 34, 169–170.

²¹ Competition Comm'n of India (Combinations) Regulations, 2024, reg. 4(2) (India); Competition Comm'n of India, *Frequently Asked Questions & Answers Relating to Combinations* 14–15 (2025), Q. 35.

²² Competition Comm'n of India, *Deal Value Thresholds, Fair Play*, No. 50, at 7 (2024).

3.4. INTERACTION WITH EXISTING THRESHOLDS

The DVT operates alongside, rather than instead of, the traditional asset and turnover thresholds under Section 5. A transaction may therefore become a combination through the traditional thresholds or through Section 5(d). The CCI expressly states that satisfying even one applicable of Section 5 threshold is sufficient to bring an M&A transaction within the definition of a combination, subject to the applicable exemptions.²³

This creates a broader screening framework:

Assets/Turnover → Traditional jurisdictional test

Transaction Value + SBOI → DVT

The practical consequence is straightforward. Parties cannot stop their analysis once the asset and turnover thresholds are found not to be satisfied. They must separately examine the DVT.

3.5. INTERACTION WITH EXEMPTIONS

The DVT also changes the practical significance of the de minimis exemption. The CCI has clarified that a transaction exceeding ₹2,000 crore and satisfying the SBOI requirement may require notification even where the target would have otherwise qualify for the small target exemption.²⁴ In other words, the DVT can bring transactions involving relatively small targets within the merger control.

Other exemptions remain relevant, but they must be examined separately. Schedule I transactions that are ordinarily unlikely to cause an AAEC may fall outside mandatory notification requirements, while the Green Channel provides a simplified route for the combinations satisfying its specific eligibility conditions.²⁵ Intra group transactions may similarly benefit from the prescribed exemptions where they fall within the relevant conditions.

The DVT therefore does not eliminate exemptions. It changes the starting point of the analysis. Parties must first determine whether the transaction satisfies Section 5(d), and only then consider whether a particular exemption is available.

²³ Competition Act, 2002, No. 12 of 2003, § 5 (India); Competition Comm'n of India, *Frequently Asked Questions & Answers Relating to Combinations*, Qs. 3–4 (2025).

²⁴ Competition Comm'n of India, *Deal Value Thresholds, Fair Play*, No. 50, at 7 (2024).

²⁵ Competition Comm'n of India (Criteria of Combination) Rules, 2024; Competition Comm'n of India (Combinations) Regulations, 2024, sch. I; Competition Comm'n of India, *Frequently Asked Questions & Answers Relating to Combinations*, Qs. 83–105, 152–161 (2025).

The broader significance is clear. India now has a merger control framework that not only looks at what a business currently owns or earns, but also at what an acquirer is willing to pay for it and how substantially that business is operated in India. That is the real shift introduced by the DVT.

4. DVT IN PRACTICE: VALUATION, DIGITAL MARKETS AND M&A TRANSACTIONS

The practical significance of the Deal Value Threshold (“DVT”) lies in its ability to capture transactions that may appear small under the traditional financial measures but are commercially significant. Its application, however, is not always straightforward. Transaction value can be complicated and so can the Indian nexus.

4.1. VALUING THE TRANSACTION

The Competition Commission of India (Combinations) Regulations, 2024 adopts a broad approach to calculating transaction value. Regulation 4(1) covers consideration that is direct or indirect, immediate or deferred, and paid in cash or otherwise. It may also capture contingent payments, call options, future payments and consideration arising from the interconnected arrangements.²⁶

This matters because M&A consideration rarely consists of a single fixed payment. Earn outs may depend on future performance. Stock consideration may fluctuate in value. Deferred consideration may become payable years after the closing. Non-compete obligations and ancillary arrangements may also form part of the economic bargain.

The OECD has similarly identified earn outs, milestone payments, changes in share prices and other contingent elements as practical difficulties in applying transaction value thresholds.²⁷ The Indian framework attempts to address this by looking at the economic substance of the transaction, rather than merely its headline purchase price.

That approach is sensible. But it also creates uncertainty. Parties must determine the value of the future or contingent consideration at the notification stage, when its ultimate value may not yet be known. A high value threshold therefore requires a careful valuation analysis before the deal is signed.

²⁶ Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1) (India).

²⁷ Org. for Econ. Co-operation & Dev. [OECD], *Start-Ups, Killer Acquisitions and Merger Control*, OECD Roundtables on Competition Policy Papers No. 248, at 42–43 (2020).

4.2. START UPS AND HIGH VALUE, LOW REVENUE BUSINESS

The DVT is particularly relevant to start ups and asset light businesses. Technology companies, fintech firms, SaaS businesses and the digital platforms may have limited turnover while attracting substantial valuations.

Their value may lie elsewhere: users, data, intellectual property, algorithms, network effects or future growth. The OECD has identified this problem in the context of “killer acquisitions” and acquisitions of nascent competitors, where the traditional turnover thresholds may fail to capture transactions involving firms with a significant future competitive potential.²⁸

The DVT addresses this gap by making transaction value relevant even when the target's current financial position is modest. A start up with ₹100 crore in turnover may nevertheless be sold for several thousand crores because the buyer expects significant future value.

This point is important, present revenue is not always a reliable measure of future competitive significance.

4.3. DIGITAL BUSINESS AND SBOI

The second major issue is the requirement of substantial business operations in India (“SBOI”). Digital businesses make this determination particularly a difficult one.

A company may have no physical office in India but millions of Indian users. It may earn revenue through a global platform rather than directly from Indian customers. Its services may be supplied across multiple jurisdictions simultaneously.

The 2024 Regulations responded by recognising different indicators of Indian operations. For digital services, the user base itself becomes relevant. The framework also considers Indian gross merchandise value and turnover in the applicable circumstances.²⁹

This is important because digital markets do not always fit traditional ideas of geographical presence. A platform can have substantial economic significance in India without maintaining substantial physical infrastructure here.

²⁸ *Id.* at 41–44; see also OECD, *Theories of Harm for Digital Mergers* (2023).

²⁹ Competition Commission of India (Combinations) Regulations, 2024, reg. 4(2) (India); Competition Commission of India, *Frequently Asked Questions & Answers Relating to Combinations* (2025).

Still, the test requires careful factual analysis. Parties must collect reliable information on the users, turnover and GMV across jurisdictions. For global digital businesses, that can be difficult and sometimes very difficult.

4.4. INTERCONNECTED TRANSACTIONS

Transaction structure is another important consideration. Regulation 9 of the 2024 Regulations requires interconnected steps forming part of the same transaction to be considered together.³⁰ This prevents parties from artificially dividing a commercial arrangement into some separate agreements merely to remain below the notification threshold.

For example, an acquisition may involve a share purchase agreement, a technology agreement and a separate arrangement concerning future consideration. If these arrangements are commercially interconnected, examining only the share purchase price may understate the true value of the transaction.

The approach is consistent with the broader principle of merger control: substance should prevail over artificial contractual separation. The OECD has similarly recognised that identifying the transaction as a whole is essential where several agreements or steps form part of a single economic operation.³¹

4.5. IMPACT ON DEAL STRUCTURING

The DVT has consequently changed the way parties must approach M&A transactions. Transaction parties can no longer treat merger control analysis as a simple post negotiation exercise based on the target's assets and turnover.

Due diligence must now consider transaction value, contingent consideration, interconnected agreements and Indian operations from an early stage. This may affect valuation negotiations and the drafting of earn-outs, options and ancillary arrangements.

It can also affect conditions precedent. Where a DVT notification is required, parties must account for the CCI's review before closing. This introduces a regulatory risk into transaction timelines and may influence long stop dates, termination provisions and allocation of antitrust risk between the parties.

³⁰ Competition Commission of India (Combinations) Regulations, 2024, reg. 9(4)–(5) (India).

³¹ Org. for Econ. Co-operation & Dev. [OECD], *Definition of Transaction for the Purpose of Merger Control Review*, OECD Roundtables on Competition Policy Papers No. 144, at 9–15 (2014).

The impact is especially significant for high-value acquisitions of digital or innovative businesses. A transaction that previously appeared outside Indian merger control may now require a detailed jurisdictional assessment.

The DVT therefore provides the CCI with a broader screening mechanism. But it also places greater responsibility on transaction parties. The price of the deal now matters almost as much as the size of the business.

5. CCI'S EMERGING APPROACH AND REGULATORY EXPERIENCE

The Deal Value Threshold ("DVT") is still relatively new in India. The statutory framework became operational on September 10, 2024, together with the 2024 combination rules and regulations.³² As a result, the CCI's experience is still developing. The more useful question at this stage is not how many DVT cases the CCI has decided, but what its early regulatory material tells us about how the threshold is likely to operate.

5.1. EARLY APPLICATION OF THE DVT

The CCI has adopted a broad reading of the DVT from the outset. Its 2025 FAQ confirms that Section 5(d) covers acquisitions of control, shares, voting rights or assets, as well as mergers and amalgamations, where transaction value exceeds ₹2,000 crore and the target has substantial business operations in India ("SBOI").³³

The CCI's approach is therefore not limited to conventional share acquisitions. More importantly, the framework is intended to capture transactions that traditional asset and turnover thresholds may miss. The CCI's own explanatory material identifies the DVT as a response to the changing nature of M&A, particularly transactions involving new-age businesses.³⁴

There is, however, an important limitation. Early regulatory experience is still too limited to establish a settled body of DVT jurisprudence. Much of the present guidance comes from the regulations, FAQs and explanatory material rather than contested decisions. That makes the framework useful, but not yet completely predictable.

5.2. INTERPRATATION OF TRANSACTION VALUE

³² Competition Commission of India, *Fair Competition for Greater Good* 55–56 (2026); Competition Commission of India (Combinations) Regulations, 2024, Gazette of India, Sept. 10, 2024.

³³ Competition Commission of India, *Frequently Asked Questions & Answers Relating to Combinations*, Q. 33 (2025).

³⁴ Competition Commission of India, *Competition (Amendment) Act, 2023: Salient Features* 8 (2023).

The CCI has adopted a deliberately comprehensive approach to transaction value. Regulation 4(1) includes direct and indirect consideration, immediate and deferred consideration, and cash or noncash consideration. It can also capture separately agreed consideration for covenants and obligations, interconnected transactions, certain payments due within two years, call options and estimated contingent payments.³⁵

The CCI's General Statement on the 2024 Regulations is particularly revealing. Stakeholders raised concerns about uncertainty in calculating contingent consideration and the possibility of parties being required to notify transactions whose value could not yet be determined with certainty. The CCI responded by allowing transaction value to be treated as exceeding the statutory threshold where the value cannot be established with a reasonable certainty by the relevant approving authority.³⁶

This shows the regulatory direction clearly. The CCI is trying to prevent artificial understatement of transaction value. At the same time, uncertainty in valuation can create a compliance dilemma for parties. When in doubt, notification may become the safer route.

5.3. SBOI PRACTICE

The SBOI requirement performs an important jurisdictional function. It prevents the DVT from applying merely because a global transaction happens to have a high valuation.

The 2024 Regulations provide three alternative indicators. For digital services, Indian business users or end users must constitute at least 10% of the global total. Alternatively, Indian GMV or Indian turnover must satisfy the prescribed 10% and ₹500 crore requirements.³⁷

The approach is significant because it recognises that economic presence in India is not always reflected by physical operations. A digital business may have substantial Indian users without maintaining substantial infrastructure in the country.

But this flexibility creates practical questions. Parties must determine which metric applies, identify the relevant user or revenue data and establish the appropriate global denominator. For multinational digital businesses, that exercise may be

³⁵ Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1) (India); Competition Comm'n of India, *Frequently Asked Questions & Answers Relating to Combinations*, Q. 34 (2025).

³⁶ Competition Commission of India, *General Statement on the Competition Commission of India (Combinations) Regulations, 2024*, at 4 (2024)

³⁷ Competition Commission of India (Combinations) Regulations, 2024, reg. 4(2) (India); Competition Commission of India, *Frequently Asked Questions & Answers Relating to Combinations*, Q. 35 (2025).

complicated. The CCI has therefore moved beyond to a simple physical presence test, but the factual inquiry has become more demanding.

5.4. DIGITAL AND INNOVATION DRIVEN TRANSACTIONS

The DVT is particularly relevant to digital and innovation driven transactions. Traditional turnover thresholds may not adequately reflect the competitive significance of a startup whose value lies in users, data, technology or future growth.

The CCI's decision to create a separate user-based SBOI test for digital services is therefore significant. It recognises that users can themselves be evidence of economic presence.³⁸ This makes the DVT more capable of identifying acquisitions of emerging businesses before their revenue becomes substantial.

Still, transaction value should not be treated as proof of competitive harm. A high valuation may reflect expected growth, intellectual property or strategic synergies rather than an intention to eliminate competition. The DVT is a jurisdictional screening mechanism, not a finding that a transaction is anticompetitive.

5.5. LESSONS FROM EARLY PRACTICE

Several lessons emerge from the CCI's early approach.

First, the DVT is intended to be substance oriented. Parties cannot simply isolate one payment or agreement when the broader transaction shows a higher economic value.³⁹

Second, the SBOI requirement provides an important Indian nexus, particularly for digital transactions. But determining that nexus can require substantial factual analysis.

Third, the DVT creates new compliance questions around contingent consideration, options, ancillary arrangements and interconnected transactions. These questions are particularly relevant during transaction structuring because the valuation analysis may need to be completed before the parties know the ultimate economic outcome.

Finally, the emerging framework reflects a broader shift in Indian merger control. The CCI is no longer looking only at the target's present assets or turnover. It is also

³⁸ Competition Commission of India, *Deal Value Thresholds, Fair Play*, No. 50, at 7 (2024).

³⁹ Competition Commission of India (Combinations) Regulations, 2024, regs. 4(1), 9(4)–(5) (India); Competition Commission of India, *Frequently Asked Questions & Answers Relating to Combinations*, Q. 34 (2025)

looking at what the transaction is economically worth and why the target matters in India.

That is the real significance of the DVT. Its success, however, will depend on whether this broader jurisdictional reach can be matched with sufficiently predictable guidance for M&A parties.

6. CRITICAL ANALYSIS: IS THE DEAL VALUE THRESHOLD WORKING?

6.1. CLOSING THE REGULATORY GAP

The Deal Value Threshold (“DVT”) addresses a genuine weakness in traditional merger control. Asset and turnover thresholds may fail to capture young, asset-light businesses whose competitive importance lies in technology, data, users or future growth. The DVT can bring such transactions within the CCI’s jurisdiction even where conventional thresholds are not satisfied.⁴⁰

That is its strongest feature. But jurisdiction is not the same as competitive harm. A transaction may have a high value without creating any appreciable adverse effect on competition (“AAEC”). The DVT therefore works best as a screening mechanism, not as evidence that intervention is warranted.

6.2. VALUATION UNCERTAINTY

The broad definition of transaction value is both useful and problematic. Including deferred, contingent and indirect consideration prevents parties from artificially reducing the apparent value of a transaction.⁴¹

Yet valuation may become difficult where consideration depends on future performance, options or uncertain events. Parties may have to make regulatory assessments before the final economic value of the transaction is known. This can increase legal costs and encourage cautious notification.

The challenge is simple: the broader the valuation rule, the greater the need for predictable guidance.

6.3. THE RS. 2,000 CRORE THRESHOLD

⁴⁰ Competition Act, 2002, No. 12 of 2003, § 5(d) (India); Competition Commission of India (Combinations) Regulations, 2024, reg. 4 (India).

⁴¹ Competition Comm’n of India (Combinations) Regulations, 2024, reg. 4(1).

A single ₹2,000 crore threshold provides an objective test, but it cannot reflect the competitive realities of every sector. A ₹2,000 crore acquisition of a pharmaceutical innovator may raise very different concerns from a similarly valued acquisition of a mature, nonoverlapping business.

Transaction value can also reflect expected synergies, intellectual property or strategic value rather than competitive significance. The OECD has similarly cautioned that transaction value is useful for identifying potentially important acquisitions but is not itself a measure of competitive harm.⁴²

The threshold should therefore remain a jurisdictional trigger, followed by substantive assessment under the AAEC framework.

6.4. INDIAN NEXUS

The SBOI requirement provides an important safeguard. It prevents the CCI from exercising DVT jurisdiction over every high-value global transaction.⁴³

The inclusion of Indian users, turnover and GMV is particularly relevant to digital businesses, where physical presence may be minimal. Still, determining the Indian nexus can be difficult for multinational platforms. The CCI may therefore need to provide further practical examples of how the SBOI tests should be applied.

6.5. COMPLIANCE BURDEN

The DVT inevitably increases compliance obligations. Parties must examine transaction value, interconnected agreements, contingent consideration and Indian operations even where traditional thresholds are not met.

This may impose costs on transactions that ultimately raise little competitive concern. The burden is particularly relevant for private-equity and technology transactions, where contractual structures can be complex.

However, some additional compliance is justified if it prevents potentially significant transactions from escaping scrutiny. The real issue is proportionality.

⁴² ☐ Org. for Econ. Co-operation & Dev. [OECD], *Start-Ups, Killer Acquisitions and Merger Control*, OECD Roundtables on Competition Policy Papers No. 248, at 42–44 (2020).

☐ Competition Comm'n of India (Combinations) Regulations, 2024, reg. 4(2).

⁴³ Competition Commission of India (Combinations) Regulations, 2024, reg. 4(2).

6.6. DVT AND INNOVATION

The strongest case for the DVT lies in protecting future competition. An innovative start-up may have limited revenue today but represent a meaningful competitive constraint tomorrow. International literature on “killer acquisitions” highlights precisely this concern.⁴⁴

Yet transaction value is only an imperfect proxy for competitive potential. A high price does not necessarily mean that the target is an emerging competitor.

The DVT should therefore be understood as a necessary but incomplete screening tool. It closes an important gap in Indian merger control, but its effectiveness ultimately depends on clear valuation rules, a workable Indian nexus test and careful substantive assessment.

The objective should not be to scrutinise every expensive acquisition. It should be to ensure that potentially important acquisitions are not invisible merely because the target is currently small.

7. RECOMMENDATIONS

The Deal Value Threshold (“DVT”) has addressed an important gap in India’s merger-control framework. Its effectiveness, however, will depend not only on the threshold itself but also on how predictably parties can determine whether a transaction falls within it. The following measures could improve certainty without weakening the CCI’s ability to examine strategically significant transactions.

7.1. CLEAR VALUATION GUIDANCE

The CCI should publish more detailed illustrations on the computation of “value of transaction” under Regulation 4 of the Combination Regulations, 2024. Particular attention is required for earn outs, options, contingent consideration, non cash consideration and ancillary agreements. The present framework deliberately adopts a broad approach, but difficult valuation questions may arise where consideration depends on future events or cannot be precisely quantified at signing. The CCI has already recognised this concern by providing that, where transaction value cannot be established with reasonable certainty, it may be treated as exceeding the statutory

⁴⁴ See generally OECD, *supra* note 3, at 11–18; Cristina Caffarra & others, *Killer Acquisitions: Evidence from Merger Enforcement*, 11 J. Antitrust Enforcement 1 (2023).

threshold.⁴⁵ Clear examples would make this rule easier to apply and reduce unnecessary conservative filings.

7.2. GREATER CLARITY ON SBOI

Further guidance is also needed on “substantial business operations in India” (“SBOI”). This is particularly relevant to digital platforms, SaaS businesses, global technology companies and data driven enterprises, where Indian economic presence may not correspond neatly with traditional turnover or asset measures. The CCI’s decision to introduce a separate digital services metric is a useful starting point.⁴⁶ However, illustrative examples involving user numbers, global turnover, Indian turnover and gross merchandise value would improve predictability. The OECD has similarly recognised that digital markets create difficulties for traditional merger control tests because competitive significance may exist before conventional financial indicators become substantial.⁴⁷

7.3. PERIODIC REVIEW OF THE RS. 2,000 CRORE THRESHOLD

The ₹2,000 crore threshold should not be treated as permanently fixed. It should be periodically reviewed against inflation, changes in M&A valuations, developments in digital markets and sector specific transaction patterns. A threshold that is appropriate at one point may become either over-inclusive or under inclusive over time. Periodic review would therefore preserve the DVT’s relevance without requiring frequent legislative intervention.

7.4. SAFE HARBOURS OR ILLUSTRATIVE GUIDANCE

The CCI could also publish illustrative categories of transactions that would ordinarily fall outside DVT concerns, alongside examples requiring closer examination. Such guidance need not create rigid safe harbours. Instead, it could function as a practical screening tool for parties and advisers. This would be particularly useful for transactions involving complex consideration structures or targets operating across multiple jurisdictions. Greater transparency at this stage

⁴⁵ Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1) (India); Competition Commission of India, *General Statement on the Competition Commission of India (Combinations) Regulations, 2024*, ¶ 15 (2024).

⁴⁶ Competition Commission of India (Combinations) Regulations, 2024, reg. 4(2) (India); Competition Commission of India, *Frequently Asked Questions on Competition Act, 2002 and Combinations Regulations*, Qs. 34–35 (2025).

⁴⁷ Organisation for Economic Co-operation and Development, *Start-ups, Killer Acquisitions and Merger Control*, OECD Roundtables on Competition Policy Papers No. 248 (2020).

would reduce compliance costs while preserving the CCI's ability to examine unusual transactions on their facts.

7.5. BETTER PRE-FILING GUIDANCE

Finally, parties should make greater use of the CCI's pre-filing consultation mechanism where transaction value or SBOI is uncertain. The CCI expressly permits parties to seek informal guidance on filing requirements and interpretational issues, although such guidance is nonbinding.⁴⁸ Greater use of this mechanism can help resolve difficult questions before signing or filing. It should therefore be treated as a practical compliance tool, particularly for transactions involving start-ups, digital businesses and complex contingent consideration.

Taken together, these measures would make the DVT more predictable without diluting its purpose. The objective should not be to reduce scrutiny of high value acquisitions, but to ensure that parties can identify their filing obligations with reasonable certainty and at an early stage.

8. CONCLUSION

The introduction of the Deal Value Threshold ("DVT") marks an important change in the architecture of Indian merger control. Traditionally, jurisdiction depended largely on the economic size of the parties, measured through assets and turnover. The DVT moves the focus towards the economic value of the transaction itself.⁴⁹ That shift matters.

The reform responds to a genuine weakness in traditional thresholds. A target may have limited assets and modest turnover while still commanding a very high acquisition price because of its technology, data, intellectual property, user base, network effects or future competitive potential. This problem has been widely discussed in the literature on digital markets and "killer acquisitions," where the competitive importance of a target may not yet be reflected in conventional financial indicators.⁵⁰ The Indian framework now has a mechanism to bring some of these transactions within the CCI's jurisdiction, provided the statutory transaction-value and substantial-business-operations requirements are satisfied.⁵¹

⁴⁸ Competition Commission of India, *Pre-Filing Consultation*, Competition Commission of India; see also Competition Commission of India, *Frequently Asked Questions on Competition Act, 2002 and Combinations Regulations*, Qs. on Pre-Filing Consultation (2025).

⁴⁹ Competition Act, 2002, § 5(d) (India), as amended by the Competition (Amendment) Act, 2023; Competition Commission of India (Combinations) Regulations, 2024, regs. 4, 9 (India).

⁵⁰ Organisation for Economic Co-operation and Development, *Start-Ups, Killer Acquisitions and Merger Control*, OECD Roundtables on Competition Policy Papers No. 248 (2020); see also Cristina Caffarra et al., *Killer Acquisitions: Evidence from Merger Enforcement*, 11 J. Antitrust Enforcement (2023).

⁵¹ Competition Act, 2002, § 5(d) (India); Competition Commission of India (Combinations) Regulations, 2024, reg. 4(2) (India).

But DVT is not a complete solution. It creates its own uncertainties. Valuing earn-outs, options, contingent consideration and non-cash components can be difficult. Determining substantial business operations in India can be even more complicated for global and digital businesses. The broad valuation rules are therefore useful from an enforcement perspective, but they also increase the need for predictable guidance.⁵²

This is where the balance becomes important. Competition enforcement cannot depend entirely on historical turnover or asset values. At the same time, merger control should not make parties uncertain about whether a transaction requires notification until the deal is already being negotiated or implemented. Excessive uncertainty can affect transaction timelines, increase advisory costs and complicate deal structuring. Comparative experience also shows that transaction-value thresholds work best when accompanied by clear jurisdictional guidance and a sufficiently identifiable domestic nexus.⁵³

The DVT should therefore be understood as a screening mechanism, not a presumption of competitive harm. Its purpose is to prevent economically significant acquisitions from escaping review merely because the target is currently small on conventional financial measures. The next stage of Indian merger control should focus on making that screening mechanism predictable.

Ultimately, the effectiveness of DVT will depend on three things working together: effective competition enforcement, regulatory predictability, and M&A deal certainty. India does not have to choose between them. A clearer valuation framework, more precise SBOI guidance, periodic review of the ₹2,000 crore threshold, illustrative guidance and meaningful pre-filing consultation can help reconcile these objectives. The real test of DVT, therefore, is not how many additional transactions it captures, but whether it captures the right transactions without creating unnecessary uncertainty for legitimate M&A activity.

⁵² Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1) (India); Competition Commission of India, *General Statement on the Competition Commission of India (Combinations) Regulations, 2024* (2024).

⁵³ Organisation for Economic Co-operation and Development, *Definition of Transaction for the Purpose of Merger Control Review*, OECD Roundtables on Competition Policy Papers No. 144 (2014);

