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Beyond Assets & Turnover: Rethinking Merger Control for Asset-Light Digital Enterprise

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ABSTRACT

The swift expansion of the digital economy has confronted the standard approaches to CCI's merger control framework, specifically those that are dependent on assets and turnover of an enterprise to decide its economic importance. Asset-light digital enterprises may hold considerable competitive value via user bases, data, intellectual property, algorithms, network effects and innovation potential in spite of having relatively low assets and turnover. This creates a regulatory problem where acquisitions of such asset-light digital enterprises may fall within the ambit of de minimis or small-target exemption and escape the standard merger inspection in spite of their potential importance for competition. This article analyses the functioning of the de minimis corporate target exemption under India's merger-control framework and assesses its ramifications for acquisitions involving asset-light digital enterprises. This article further examines the relationship which exists between Section 5 of the Competition Act, 2002, the de minimis exemption and the new Deal Value Threshold introduced through the Competition (Amendment) Act, 2023. Specific attention is given to the requirement of substantial business operations in India and its pertinence to digital enterprises with substantial amounts of Indian users but comparatively limited domestic assets and turnover. This article further examines whether factors like transactional value, user presence, data, intellectual property and potential competition impart more meaningful indicators of competitive importance than traditional financial factors alone. Through a doctrinal as well as a comparative analysis, the article examines whether India's merger control framework introduced after 2023 sufficiently deals with the possibility of competitively significant digital acquisitions getting away from the scrutiny while also maintaining regulatory and legal certainty. This article culminates by identifying the major challenges that persist in the application of merger-control thresholds to the rapidly evolving digital markets and suggests feasible approaches for strengthening India's framework.

Keywords: *Deal Value Threshold, De Minimis, Merger-Control, Acquisition, Digital Markets*

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I. INTRODUCTION

The growth of the digital economy has challenged conventional merger-control thresholds based on assets and turnover. Digital enterprises possess substantial competitive value through their user bases, data, algorithms, intellectual property, network effects and innovation potential, in spite of having limited physical assets or current revenue.

This generates a risk that a well-established platform may acquire a promising digital start-up before it develops into an effective competitor. Such acquisitions are commonly termed "killer acquisitions".[1] However, not every acquisition of a start-up can be considered anti-competitive, since acquisitions may also give capital, technology, infrastructure and distribution opportunities. The major concern is whether conventional thresholds can identify transactions whose major competitive importance lies in future innovation or potential competition rather than in present assets or turnover.

Digital markets are characterised by network effects, economies of scale, data advantages, multi-sided platforms and low marginal costs. These features can allow firms to expand rapidly and reinforce their market standing. A start-up may therefore have competitive significance because of its technology, data, users or capacity to enter an adjacent market, even if its present turnover remains low.[2]

Section 5[3] and Section 6[4] of the Competition Act, 2002 regulate combinations and forbid transactions that cause, or are likely to cause, an appreciable adverse effect on competition. This regulatory framework has conventionally relied on assets and turnover to pinpoint notifiable combinations. The *de minimis* or small-target exemption excludes acquisitions of targets whose assets or turnover fall below the prescribed thresholds. Although the exemption lowers compliance costs, it may fail to capture asset-light digital enterprises whose financial size does not reflect their competitive significance.

To deal with this concern, the Deal Value Threshold ("DVT") was introduced by the Competition (Amendment) Act, 2023, under which a transaction exceeding INR 2,000 crore may require notification where the target has substantial business operations in the country, even if the conventional asset and turnover thresholds are not met. The DVT introduces

[1] OECD, *Start-ups, Killer Acquisitions and Merger Control*, OECD Roundtables on Competition Policy Papers No. 248 (2020), https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/05/start-ups-killer-acquisitions-and-merger-control_201583e4/dac52a99-en.pdf.

[2] *See* Colleen Cunningham, Florian Ederer & Song Ma, *Killer Acquisitions*, 129 J. POL. ECON. 649, 649 (2021), https://www.antitrustinstitute.org/wp-content/uploads/2022/05/0265-Killer-Acquisitions-129-J.-Pol.-Econ.-649-2021.pdf.

[3] The Competition Act, 2002, § 5, No. 12, Acts of Parliament, 2003 (India).

[4] The Competition Act, 2002, § 6, No. 12, Acts of Parliament, 2003 (India).

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transaction value as an added indicator of a target's potential economic and strategic importance.[5]

The requirement of substantial business operations in India holds particular importance for digital enterprises. A platform may have a notable Indian presence through its users and data without having any substantial domestic assets or generating large local revenue. Therefore, a user-based approach may provide a more realistic measure of digital market presence, although user numbers must be examined alongside factors like engagement, switching costs, multi-homing and data quality.

However, the DVT is not conclusive proof that a transaction is anti-competitive. It simply determines whether the CCI may review the transaction. The CCI must still examine market structure, potential competition, innovation, entry barriers, data advantages, network effects, efficiencies and consumer benefits.

Existing literature identifies a grave mismatch between traditional merger thresholds and the economics of digital enterprises. In *Competition Policy for the Digital Era*, Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer analyse the importance of platforms and data and the need to reconsider merger control. Their examination provides a conceptual foundation for comprehending why the current turnover framework may inadequately represent a digital target's competitive significance.[6]

Colleen Cunningham, Florian Ederer and Song Ma's "Killer Acquisitions", published in the *Journal of Political Economy*, analyses acquisitions undertaken to discontinue competing innovation projects.[7] Using data from the pharmaceutical industry, the authors establish how acquisitions can pre-empt future competition. The study helps in analysing innovation incentives and budding competition, but its sector-specific findings should not be treated as direct empirical evidence of equivalent practices in digital markets.

The OECD's *Theories of Harm for Digital Mergers*[8] expands the digital market analysis by assessing network effects and the competitive risks attached to platform acquisitions. This literature supports going beyond existing market shares while keeping a transaction-specific

[5] The Competition (Amendment) Act, 2023, § 6, No. 9, Acts of Parliament, 2023 (India) (inserting clauses (d) and (e) in § 5 of the Competition Act, 2002); *see* Anubhav Sinha & Nipun Kumar, *Deal-Value Threshold: Revisiting Traditional Thresholds for Merger Control*, 7 INDIAN COMPETITION L. REV. 65, 65 (2022), http://iclr.in/wp-content/uploads/2024/03/ICLR-Volume-71-Article-5-pp-65-78-1.pdf.

[6] JACQUES CRÉMER, YVES-ALEXANDRE DE MONTJOYE & HEIKE SCHWEITZER, COMPETITION POLICY FOR THE DIGITAL ERA 110–11 (Publications Office of the European Union 2019), https://www.skadden.com/-/media/files/publications/2019/04/competition-policy-for-the-digital-era/fn1_kd0419345enn.pdf?la=en.

[7] Cunningham, Ederer & Ma, *supra* note 2, at 649.

[8] OECD, *Theories of Harm for Digital Mergers*, OECD Roundtables on Competition Policy Papers No. 293 (2023), https://doi.org/10.1787/0099737e-en.

assessment of likely harm. Contrarily, "Innovation in EU Merger Control: Theories of Harm and Efficiencies"[9] acknowledges that merging complementary assets can aid innovation. It therefore reinforces distinguishing acquisitions that eliminate future challenges from those that accelerate the process of technological development.

Taken conjointly, these sources establish the need for broader screening and careful substantive examination. Building on them, this article focuses on the convergence between India's *de minimis* exemption, the DVT and the Indian-business-operations requirement, and asks whether these mechanisms appropriately capture important digital acquisitions without imposing disproportionate regulatory burdens.

II. THE *DE MINIMIS* TARGET EXEMPTION

Merger-control authorities use thresholds to avoid reviewing every acquisition and to focus on transactions that have a chance of affecting competition. The *de minimis* exemption operates as an early-phase filter by excluding acquisitions of targets with limited assets or turnover. As per the CCI's official guidance, the notification dated 7 March 2024 exempted targets which had either Indian assets not exceeding INR 450 crore or Indian turnover not exceeding INR 1,250 crore; since 10 September 2024 the same figures have applied under section 5(e) of the Act and the rules made under it. The exemption lowers compliance costs and allows the CCI to focus on economically significant transactions.[10] However, assets and turnover may not reflect the significance of digital enterprises. A start-up may have limited physical assets and limited revenue while still possessing valuable algorithms, data, intellectual property, a user base and the potential to innovate. Its financial state may not be the best marker of its ability to become a future competitor. The OECD's research on killer acquisitions acknowledges that acquisitions of new competitors at a nascent stage may affect innovation and potential competition despite their limited commercial activity at that stage.[11] The exemption thus may create a gap between the financial size of an organisation and its competitive significance. This by no means makes the exemption superfluous; it remains integral to reducing regulatory burdens. However, digital markets require further indicators, like users, data, network effects and the potential to innovate. Academic research has also identified the acquisition of low-revenue technology start-ups as a potential enforcement gap in conventional merger control. The DVT tackles this issue by

[9] Martin Peitz, *Innovation in EU Merger Control: Theories of Harm and Efficiencies*, J. EUR. COMPETITION L. & PRAC. lpag026 (2026), https://doi.org/10.1093/jeclap/lpag026.

[10] COMPETITION COMM'N OF INDIA, *Filing of Combination Notices: Introduction*, https://www.cci.gov.in/combination/combination/filing-of-combination-notice/introduction; The Competition (Minimum Value of Assets or Turnover) Rules, 2024, r. 3, Gazette of India, pt. II sec. 3(i) (Sept. 9, 2024) (India).

[11] OECD, *Start-ups, Killer Acquisitions and Merger Control*, *supra* note 1, at 3, 7.

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allowing review of high-value transactions even where the target falls within the *de minimis* threshold. Transactions exceeding INR 2,000 crore may need prior CCI approval if the target has substantial business operations in India. Section 5(e) of the Act, which overrides only clauses (a) to (c) of section 5, confirms that such transactions require notification even if they would otherwise fall within the small-target exemption.

The two mechanisms hence operate collectively: the *de minimis* exemption predominantly focuses on the target's assets and turnover, while the DVT factors in the transaction value and the target's operations in India. Under the Competition Commission of India (Combinations) Regulations, 2024, digital enterprises may fulfil the Indian-operations requirement where their business users or end users in India are 10% or more of their total global number of such users. If a transaction crosses the DVT, it does not establish that the transaction is anti-competitive. It only allows the CCI to review the transaction. The CCI must still assess market structure, potential competition, innovation, data advantages, network effects, efficiencies and consumer benefits.

III. COMPETITIVE SIGNIFICANCE OF ASSET-LIGHT DIGITAL ENTERPRISES

The shortcomings of the *de minimis* exemption and the pertinence of the DVT become clearer when the competitive traits of an enterprise are analysed. Unlike conventional businesses, digital enterprises derive value mainly from intangible resources like data, software, algorithms, intellectual property, users and technological expertise.

A large user base may create a network effect, under which an enterprise becomes more valuable as additional users join its platform. This may allow swift expansion and create barriers to entry. Digital firms may also profit from economies of scale and scope by using the same technology or data across multiple products and markets. Data can play a significant role in strengthening these advantages by facilitating personalised services, improved algorithms, targeted advertising and product development. However, possession of data should not automatically be construed as market power. Its importance depends on factors like its quality, uniqueness, exclusivity, substitutability and accessibility to competitors.[12]

A start-up may also represent a potential competitor even where it does not compete with the acquiring firm at present. Its technology, users or innovation pipeline may allow it to compete with that firm in the same market in the foreseeable or immediate future. Research on "killer acquisitions" warns that an existing firm may acquire an innovative firm at its nascent stage to eliminate or weaken a future threat. The CCI therefore must go further in its examination than

[12] OECD, *Theories of Harm for Digital Mergers*, *supra* note 8, at 4.

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the existing market share. Relevant factors may include active users, user engagement, switching costs, multi-homing, data access, intellectual property, innovation plans and the target's ability to expand into related markets. User numbers alone may paint an incomplete picture where users access numerous platforms or rarely engage with the services. The assessment should also take into consideration the counterfactual scenario, that is, what would happen in the absence of the acquisition. The target might grow and expand independently, enter the acquirer's market, be acquired by another firm or fail commercially. Comparing these possibilities with the likely effects of the proposed acquisition is essential to decide whether the transaction may reduce innovation or potential competition.

Consequently, the DVT should function as a filtering mechanism rather than a presumption of illegality. After notification, the CCI must weigh possible competitive risks against efficiencies such as technological integration, lower costs, improved distribution and consumer benefits.

IV. Challenges in applying the DVT

Although the DVT expands the CCI's jurisdiction to high-value digital acquisitions, its real-life application raises legal as well as practical difficulties. Under the Competition Act, 2002 and the CCI (Combinations) Regulations, 2024, transaction value may include cash, shares, deferred consideration, earn-outs, options, non-compete payments and other connected arrangements. Hence, calculating the value of complex digital transactions may lead to uncertainty.

The INR 2,000 crore value threshold may also fail to capture acquisitions of promising start-ups which are purchased at lower values because they are at a nascent stage or operate in markets which are still growing. The OECD's study on start-ups and killer acquisitions similarly observes that a target's present turnover may not aptly reflect its future competitive significance.[13] The requirement of substantial business operations in India presents another challenge. User numbers may show an Indian connection, but registered users may be inactive, and users may concomitantly access competing platforms. The CCI should therefore consider factors like active users, engagement, switching costs and the availability of alternatives. Data must also be examined qualitatively. Its competitive significance depends on numerous factors like quality, uniqueness, exclusivity, substitutability and its ability to improve products or algorithms. A big dataset may have little to no value if it is easily replicated, while a smaller exclusive dataset may generate a significant competitive advantage.

Assessing potential competition is particularly difficult as it requires a forward-looking counterfactual. The CCI must consider whether, without the acquisition, the target would have

[13] OECD, *Start-ups, Killer Acquisitions and Merger Control*, *supra* note 1, at 13.

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grown and expanded independently, entered the acquirer's market, been acquired by some other firm or failed commercially.

Ultimately, the DVT must balance potent enforcement with innovation and investment. Excessive intervention may limit beneficial acquisitions, while insufficient scrutiny may allow dominant platforms to remove future competitors. The DVT should therefore trigger review rather than automatic prohibition; the final decision should be based on proof of likely competitive harm and available efficiencies.

V. Comparative perspective: Germany and Austria

The challenges discussed above are not unique to India. Germany and Austria also introduced transaction-value thresholds in 2017 to capture acquisitions of targets whose low turnover may mask their actual competitive significance. Their thresholds apply where the consideration exceeds EUR 400 million and EUR 200 million respectively, alongside additional turnover and domestic-activity requirements. These are therefore additional notification tests rather than independent triggers based solely on the purchase price.[14]

Both regimes require the target to have substantial domestic activities, a requirement serving a purpose comparable to India's requirement of substantial business operations. This shows that domestic turnover may inadequately measure a digital enterprise's presence in a jurisdiction. Indicators such as users and usage can therefore assist in establishing the necessary local connection. Indirect users may also be pertinent where the target's service is incorporated into another digital offering. The main lesson for India is the significance of guidance alongside statutory thresholds. Detailed explanations of consideration, connected arrangements and domestic activity can improve predictability without relinquishing scrutiny of low-revenue targets. This comparison supports using transaction value alongside local presence, while maintaining the distinction between a notification obligation and a finding of competitive harm.

VI. Recommendations for strengthening India's framework

The comparison above suggests that India should persist with the *de minimis* exemption while ameliorating the clarity and application of the DVT. Reform should primarily focus on predictability and effective scrutiny while preserving beneficial investment.

[14] Bundeskartellamt, *Joint Guidance on New Transaction Value Threshold in German and Austrian Merger Control Submitted for Public Consultation* (May 14, 2018), https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2018/14_05_2018_TAW.html; *see also* OECD, *Start-ups, Killer Acquisitions and Merger Control*, *supra* note 1, at 45.

First, the CCI should augment Regulation 4[15] of the Combinations Regulations, 2024 with practical examples addressing contingent consideration, interconnected agreements and non-cash payments. This would assist parties in calculating transaction value consistently and reduce avoidable notification uncertainty.

Secondly, guidance should explain how digital enterprises must identify and count Indian business users and end users. The CCI's General Statement clarifies the adoption of an independent user-based metric for digital services. Further examples on duplicate accounts, inactive users and measurement periods would better its application. Engagement and multi-homing should inform the substantive competitive assessment rather than become additional, unwritten notification conditions.

Thirdly, substantive review should assess evidence of potential competition, including product-development plans, technological capabilities and likely independent expansion. It should distinguish acquisitions that remove future challenges from those amalgamating resources to accelerate innovation.

Finally, the CCI should examine efficiency claims on the basis of evidence rather than presume that every high-value acquisition is harmful. Integration of technology and improved distribution may benefit consumers, but such claims need scrutiny.[16]

VII. Balancing Competitive Risks and Innovation Benefits

Beyond ameliorating notification rules, India's framework must balance the protection of future competition with the benefits of start-up acquisitions. The DVT brings certain high-value transactions within the CCI's inspection even where the small-target exemption would otherwise apply. However, this expansion of jurisdiction should not create a presumption that merely acquiring an innovative digital enterprise is inherently harmful. The main issue is whether the acquisition removes a genuine competitive threat or enables the target to realise its true commercial and technological potential. Merging a start-up's technology with an acquirer's complementary resources may speed up product development and deployment. Such benefits must be totally distinguished from transactions that enfeeble incentives to innovate or eliminate an emerging rival.

Hence, substantive review should assess both the target's likely independent development and the potential benefits of integration. Relevant evidence may include product-development plans,

[15] Competition Commission of India (Combinations) Regulations, 2024, reg. 4, Gazette of India, pt. III sec. 4 (Sept. 9, 2024) (India).

[16] *See* Jorge Padilla, *When and How to Rescue Efficiencies from Oblivion in Horizontal Merger Control?*, J. Antitrust Enf't jnag012 (2026), https://doi.org/10.1093/jaenfo/jnag012.

technological complementarities and the resources needed to commercialise the target's innovation. Neither baseless speculative claims of future rivalry nor general assurances of efficiency should determine the outcome without supporting evidence.

This approach protects the distinction between scrutiny and prohibition. Transaction value and Indian user presence recognise acquisitions requiring examination; they do not resolve whether intervention is justified. A balanced examination should safeguard emerging competition while allowing acquisitions that genuinely improve innovation and consumer outcomes.

VIII. Conclusion

The widespread growth of asset-light digital enterprises has revealed the limits of relying solely on assets and turnover to identify competitively important acquisitions. A start-up may have moderate revenue and limited physical infrastructure while having integral technology, data, users and innovation potential of great value. Its financial stature therefore may not provide an adequate or complete picture of its ability to constrain an incumbent or evolve into a competitor in the near or immediate future.[17]

The fitting response is not to abolish the *de minimis* exemption, which remains helpful for reducing unnecessary filings and preserving regulatory resources. Instead, it must function alongside additional criteria that acknowledge competitive significance beyond current financial performance. India's DVT promotes this objective by requiring notification of transactions exceeding INR 2,000 crore where the target has substantial business operations in India, notwithstanding eligibility for the small-target exemption. Nonetheless, the DVT is a jurisdictional corrective mechanism, not a complete answer to digital merger concerns. A steep purchase price does not establish competitive harm, while acquisitions falling below the threshold may still involve promising competitors. Similarly, the user-based Indian-nexus test in the CCI (Combinations) Regulations, 2024 establishes a foundation for notification rather than proof of market power.

The framework's ultimate success depends on implementation: predictable notification rules and an evidence-based examination of potential competition, innovation and efficiencies. The CCI must differentiate acquisitions that neutralise feasible future challenges from those that amalgamate complementary resources and fast-track technological innovation and development. This distinction is vital to safeguard competition without sacrificing the advantages of investment and integration.

[17] *See* Jean Tirole, *Competition and Industrial Policy in the 21st Century*, 3 Oxford Open Econ. i983 (2024), https://doi.org/10.1093/ooec/odad080.

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India's altered framework should therefore preserve the administrative benefits of the *de minimis* exemption without equating financial smallness with competitive insignificance. Its primary objective should be meaningful and genuine scrutiny of digital acquisitions of strategic significance, not automatic opposition to start-up acquisitions or the safeguarding of individual competitors.

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