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THE THRESHOLD TRAP: WHY INDIA'S MERGER CONTROL THRESHOLDS CANNOT CATCH KILLER ACQUISITIONS IN DIGITAL MARKETS, AND WHAT MUST CHANGE

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ABSTRACT

India's digital economy is booming, valued at about $250 billion in 2023 and expected to hit a massive $1 trillion by 2030. But there's a troubling trend: big online companies are frequently buying up promising smaller rivals, in what some experts call "killer acquisitions." The core issue, as we see it, is why these significant buyouts so often slip past India's Competition Act of 2002. Essentially, the current law only considers a company's assets and sales figures (under Section 5) when deciding if a deal needs to be reviewed, completely overlooking the actual value of the transaction itself.

We've thoroughly examined specific sections of the Competition Act (5, 6, and 20(4)) and studied real-world examples like the Zomato-Blinkit deal in 2022 and Flipkart-Myntra back in 2014. We also looked at how other countries and regions handle this, such as Germany, Austria, South Korea, and the EU's Digital Markets Act, all of which use a deal's value as a trigger for scrutiny. Our analysis reveals that India's existing rules create a major blind spot, allowing many competitively significant digital acquisitions to pass through without any meaningful check.

This problem goes beyond individual deals; this regulatory gap actively discourages investors from putting money into new digital ventures. It creates a "kill zone" effect, effectively harming innovation across the entire digital ecosystem, not just from the immediate impact of one company being acquired. To fix this, we're proposing a concrete change to the law: introduce a new Section 5(1A) that would require any deal worth over Rs. 2,000 crore to be automatically reviewed. On top of that, Section 20(4) should be adjusted to specifically make

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sure regulators consider how a deal might affect future competition, stifle new ideas, and lead to too much data being concentrated in one company's hands. Ultimately, if these reforms aren't implemented, India's competition framework will continue to let big players simply buy out and extinguish future competitive threats in what is undoubtedly its most crucial economic sector.

Keywords: *Killer Acquisitions, Transaction Value Threshold, Merger Control, Competition Act 2002, Section 5, Digital Markets, Kill Zones, Platform Economics, Potential Competition, Innovation Competition, Competition Commission of India.*

I. INTRODUCTION

In January 2022, Blinkit, then India's largest quick commerce platform was losing approximately Rs. 768 crores annually on revenues of Rs. 1,109 crores.[1] By June 2022, Zomato Limited had agreed to acquire it for Rs. 4,447 crores, a valuation of approximately four times revenue for a deeply loss-making enterprise.[2] The Competition Commission of India (CCI) approved the transaction in Phase I in October 2022, without imposing any conditions.[3] No significant new entrant has emerged in India's quick commerce sector since. This transaction encapsulates a broader regulatory failure.

When a dominant digital platform pays a significant premium to acquire a high-growth, loss-making competitor, the strategic motivation is typically the elimination of a potential threat rather than the integration of complementary capabilities what Cunningham, Ederer, and Ma (2021) term a 'killer acquisition.'[4] The critical question is whether India's competition law framework is capable of identifying such transactions, subjecting them to rigorous scrutiny, and where warranted, blocking or conditioning them to protect competition and innovation. This article argues that the answer, under the current Section 5[5] threshold regime, is clearly no.

The core structural problem is the absence of a transaction value threshold. India's notification

[1]Blinkit FY22 financials compiled from company filings and Venture Intelligence database. Revenue: Rs. 1,109 crore; Net Loss: Rs. 768 crore.
[2] Zomato Limited, Press Announcement, 'Zomato to Acquire Blinkit in an All-Stock Deal,' 24 June 2022.
[3]Competition Commission of India, Order under Section 31(1), Combination Registration No. C-2022/05/943, Zomato Limited / Blinkit Limited (October 2022).
[4]Colleen Cunningham, Florian Ederer and Song Ma, 'Killer Acquisitions' (2021) 129(3) Journal of Political Economy 649, 650–651.
[5]Competition Act, 2002 (Act 12 of 2003), s. 5.

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regime under Section 5 requires pre-merger notification only when specified asset or turnover thresholds are met. These thresholds measure existing financial size. They cannot capture acquisitions in which a dominant firm pays a high price signalling strategic elimination value precisely because the target has not yet monetised its competitive position. Germany recognised this structural inadequacy in 2017 and introduced a transaction value threshold through the 9th Amendment to the Gesetz gegen Wettbewerbsbeschränkungen (GWB).[6] Austria followed in the same year,[7] South Korea amended its Monopoly Regulation and Fair Trade Act in 2021,[8] and the European Union's Digital Markets Act (2022) imposed notification obligations on designated gatekeeper platforms for all digital sector acquisitions irrespective of target revenue.[9] India, despite the Competition Law Review Committee (CLRC) recommending consideration of transaction value thresholds in 2019,[10] did not implement any such reform through the Competition (Amendment) Act, 2023.[11]

This article makes three principal arguments. First, that the Section 5 threshold architecture is structurally incapable of capturing the most competitively significant category of digital market acquisitions. Second, that this jurisdictional gap not only permits individual harmful acquisitions to proceed unscrutinised but compounds harm by generating kill zones — sectors where the pattern of dominant platform acquisitions deters venture capital investment and entrepreneurial entry. Third, that a transaction value threshold of Rs. 2,000 crore, accompanied by targeted amendments to Section 20(4), would address these gaps without generating disproportionate compliance burdens on the startup ecosystem.

Part II traces the economic theory of killer acquisitions and the kill zone literature. Part III provides doctrinal analysis of the Section 5 threshold framework and its specific inadequacies for digital markets. Part IV presents two detailed case studies Zomato-Blinkit and Flipkart-Myntra that document how high-value, low-revenue acquisitions escape scrutiny under the current regime. Part V surveys international transaction value threshold models and extracts

[6]Gesetz gegen Wettbewerbsbeschränkungen (GWB), 9th Amendment (9. GWB-Novelle), entered into force 9 June 2017, inserting s. 35(1a).
[7]Austrian Cartel Act 2005 (Kartellgesetz 2005, KartG), s. 9a, inserted by Federal Law of 26 March 2017.
[8]Monopoly Regulation and Fair Trade Act (MRFTA), Republic of Korea, amended 2021 to introduce a transaction value threshold of KRW 600 billion.
[9]Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act), Art. 14.
[10]Competition Law Review Committee, Report (Ministry of Corporate Affairs, Government of India, July 2019) ('CLRC Report'), paras. 9.4–9.7.
[11]Competition (Amendment) Act, 2023 (Act 14 of 2023). The Amendment primarily amended procedural timelines and introduced the Green Channel mechanism. It did not insert any transaction value threshold.

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lessons for India. Part VI develops the legislative reform proposals with draft statutory language. Part VII addresses anticipated objections. Part VIII concludes.

II. KILLER ACQUISITIONS AND KILL ZONES: THE ECONOMIC FRAMEWORK

A. The Theory of Killer Acquisitions

The concept of killer acquisitions was formalised in a landmark empirical study by Cunningham, Ederer, and Ma (2021), published in the Journal of Political Economy.[12] Examining over 35,000 pharmaceutical drug development projects and 4,000 acquisitions between 1989 and 2011, the authors found that when an incumbent pharmaceutical firm acquired a startup developing a drug overlapping with the incumbent's existing pipeline, the acquired project was 12.6 percentage points more likely to be discontinued than non-overlapping projects. Critically, discontinuation did not correlate with project quality metrics ruling out efficiency rationales and was concentrated in projects developing close substitutes to the acquirer's products.

The economic logic is straightforward: an incumbent firm with market power will pay more to acquire a nascent competitor than an independent investor would, because the incumbent values not only the target's assets but also the elimination of the target's future competitive threat. The incumbent internalises the 'business-stealing effect' — the erosion of its own profits that a successful independent competitor would cause. This creates a systematic tendency for dominant firms to acquire and discontinue innovations that would otherwise threaten their market position.

Federico, Langus, and Valletti (2017) extended this analysis to innovation competition generally, demonstrating that mergers in R&D-intensive industries reduce innovation incentives post-merger because the merged entity internalises competitive externalities.[13] This theoretical framework is particularly relevant to digital markets, where competitive advantage accumulates sequentially and cumulatively through data assets, user bases, and platform network effects.

[12]Cunningham, Ederer and Ma (n 4) 649. The study found that overlapping acquired projects are 12.6 percentage points more likely to be discontinued than non-overlapping projects.
[13]Giulio Federico, Gregor Langus and Tommaso Valletti, 'Horizontal Mergers and Product Innovation' (2017) 59 International Journal of Industrial Organization 1.

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B. Kill Zones: Systemic Innovation Harm

Individual killer acquisitions cause direct harm to competition. However, their overall effect, noted in the literature as kill zones, may be more significant. Kill zones are market areas where the usual pattern of dominant platform acquisitions discourages venture capital investment. Investors often believe that any startup gaining significant traction will either be bought on terms favorable to the incumbent or will struggle to compete against the resources of a dominant platform. Srinivasan and Bhattacharyya (2020) provided evidence of kill zones by showing that venture capital funding in sectors related to Facebook's major acquisitions dropped by about 40% compared to control sectors. Kamepalli, Rajan, and Zingales (2020) found that acquisitions by dominant platforms lead to fewer new entries in adjacent market segments. Wollmann (2019) discovered that merger enforcement has an impact: when US HSR thresholds were raised, entry rates dropped, and market concentration increased in affected industries.

In India's digital economy, we can see kill zone effects across several sectors. After the Flipkart-Myntra-Jabong consolidation, independent venture capital funding for fashion e-commerce startups fell significantly. Following the consolidation in food delivery around Zomato and Swiggy, no significant new entrant has reached scale. The EdTech consolidation from 2020 to 2022, led by Unacademy's series of acquisitions of PrepLadder, CodeChef, and Mastree, resulted in a decrease in the formation of new edtech startups in similar segments. These kill zone effects represent a systemic cost that goes well beyond the direct harm of any single acquisition.

C. Digital Markets and the Threshold Implication

Digital platform markets exhibit structural characteristics that amplify killer acquisition incentives and simultaneously complicate regulatory identification of harmful acquisitions. Network effects - both direct and indirect, create winner-takes-most dynamics in which market tipping towards a dominant incumbent is common.[14] These structural features have a direct impact on threshold design. A new digital platform competitor may have low current revenue because user acquisition is prioritized over monetization during early growth stages. At the same time, it can hold significant competitive potential based on its user base, data assets, network position, and growth path. A threshold system that recognizes this competitive importance must include a measure of what the market thinks the target is worth, which is the

[14]Jean-Charles Rochet and Jean Tirole, 'Platform Competition in Two-Sided Markets' (2003) 1(4) Journal of the European Economic Association 990; Jean Tirole, The Theory of Industrial Organization (MIT Press 1988).

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transaction value.

III. THE SECTION 5 THRESHOLD GAP: DOCTRINAL ANALYSIS

A. The Operative Framework

Section 5 of the Competition Act, 2002 defines a 'combination' to include any acquisition of shares, voting rights, or assets of an enterprise; acquisition of control; or merger or amalgamation.[15] The section mandates notification to the CCI when specified thresholds are exceeded. Following the Competition (Amendment) Act, 2023, the operative thresholds for 'persons' are: combined assets in India exceeding Rs. 2,000 crore, or combined turnover in India exceeding Rs. 6,000 crore, with corresponding international plus domestic alternatives.[16]

A critical feature of the current regime is the complete absence of any transaction value component. The thresholds are exclusively backward-looking, measuring the existing financial scale of the merging parties.

The de minimis exemption compounds this inadequacy. The CCI's exemption regulation provides that combinations are exempt from notification where the value of assets of the enterprise being acquired does not exceed Rs. 450 crore in India, or where its turnover does not exceed Rs. 1,350 crore in India.[17] This exemption was designed to reduce compliance burden for genuinely small acquisitions. In practice, it creates a safe harbour precisely for the nascent startup acquisitions that present killer acquisition concerns — targets with limited current financial scale but significant competitive potential.

B. Why Asset and Turnover Tests Fail Digital Markets

The issue with using asset-based thresholds for digital markets is structural. A digital platform's competitive value lies in its user base, which creates network effects, its accumulated data that helps train recommendation algorithms and personalization systems, its brand recognition and user trust, and its ecosystem of developers and merchants. These competitive assets are not adequately captured by book value accounting under Indian standards.

Turnover-based thresholds have a different but equally serious flaw: they measure current income, not competitive potential. Digital platforms in their growth phase often focus on

[15] Competition Act, 2002 (Act 12 of 2003), s. 5 (defining 'combination' and mandating notification thresholds).
[16] Competition Act, 2002, s. 5 as amended by Competition (Amendment) Act, 2023 (Act 14 of 2023), Schedule. Combined domestic thresholds: Assets Rs. 2,000 crore / Turnover Rs. 6,000 crore.
[17] CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, Regulation 4 read with Notification No. S.O. 674(E) (MCA, 4 March 2011), as amended. De minimis exemption: target assets ≤ Rs. 450 crore or target turnover ≤ Rs. 1,350 crore in India.

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acquiring users rather than monetizing them. They keep prices low or even free to grow their market presence before later extracting value. A platform with ten million monthly active users and no revenue holds much more competitive importance than its revenue figures indicate.

Transaction value, on the other hand, reflects the buyer's personal view of the target's future competitive importance. The extra amount paid beyond the target's financial metrics, known as goodwill, shows the strategic value of removing a potential competitor, acquiring its data assets, and securing its network position. When a leading digital platform pays four times revenue for a loss-making startup, that price indicates competitive importance that asset and turnover assessments completely overlook.

C. The Assessment Framework Gap Under Section 20(4)

Even when a digital market acquisition triggers notification, the CCI's substantive assessment framework exhibits serious inadequacies. Section 20(4) sets out eleven factors the CCI must consider in assessing whether a combination causes or is likely to cause an appreciable adverse effect on competition (AAEC).[18] These include, relevantly: actual and potential competition (s. 20(4)(a)); barriers to entry (s. 20(4)(b)); likelihood of removal of a vigorous competitor (s. 20(4)(i)); and the nature and extent of innovation (s. 20(4)(j)).

The statutory language is adequate in principle. The problem lies in the CCI's practice. A systematic review of over fifty CCI combination orders in digital and technology sectors from 2015 to 2024 reveals a consistent pattern: potential competition under Section 20(4)(a) is addressed with formulaic statements, without any forward-looking analysis of the target's growth trajectory, funding history, or management statements of competitive intent. Innovation competition under Section 20(4)(j), the provision most directly relevant to killer acquisitions has been assessed in essentially no digital market combination order as a distinct analytical question.[19]

IV. CASE STUDIES: THRESHOLD FAILURE IN PRACTICE

A. Zomato-Blinkit (2022): The Paradigm Case

Blinkit, at the time of its acquisition, was India's largest quick commerce platform by dark store count (approximately 400 stores) and market share (approximately 40% of the segment).

[18]Competition Act, 2002, s. 20(4)(a)–(k).

[19]The author reviewed 54 publicly available CCI combination orders in digital/technology sectors from 2015–2024 from the CCI website (www.cci.gov.in). No order was identified containing a probability-of-entry analysis or quantified assessment of innovation competition under s. 20(4)(j).

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It had pioneered the 10–15 minute grocery delivery model in India through its dark store infrastructure. Despite its market position, Blinkit was financially distressed, recording losses of approximately Rs. 768 crores on revenue of Rs. 1,109 crores in FY22. Zomato's Rs. 4,447 crore consideration represented approximately four times revenue for a loss-making company.

Metric	Blinkit Figure	Regulatory Relevance Under Section 5
Revenue (FY22)	Rs. 1,109 crore	Potentially relevant to turnover threshold; modest
Net Loss (FY22)	Rs. (768) crore	Entirely irrelevant under current framework
Deal Consideration	Rs. 4,447 crore	Entirely irrelevant to notification — core of threshold gap
Revenue Multiple	~4.0x	Signals strategic (elimination) value; uncaptured by Section 5
Quick Commerce Market Share	~40%	Relevant only if market analysed; CCI treated as separate market

Table 1: Zomato-Blinkit — Threshold Gap Analysis

The CCI approved the combination in Phase I without conditions. The Commission said food delivery and quick commerce are two markets. They looked at how little they overlap now and decided that was enough.. They didn't think about what would have happened if Blinkit had stayed on its own.

Blinkit was planning to deliver restaurant meals and make deliveries in cities. This would have made it compete directly with Zomato.

The Commission did not think about how this might have affected competition.

Now Zomato is, in charge of Indias food delivery platform and its largest quick commerce service. It also has a business that supplies restaurants (Hyperpure) and a service that helps people find restaurants. This gives Zomato a lot of data that new companies can't easily get.

B. Flipkart-Myntra (2014): The Roll-Up Template

In 2014, Flipkart India Private Limited acquired Myntra Designs Private Limited — then India's leading fashion e-commerce specialist — for approximately Rs. 2,000 crore,

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representing approximately 8–10x Myntra's annual revenue.[20] The CCI approved the transaction in Phase I, noting that sufficient competition remained from Amazon India, Snapdeal, and Jabong. This approval proved inadequate from a forward-looking perspective. Post-acquisition, through Myntra, Flipkart acquired Jabong in 2016 for approximately Rs. 350 crore,[21] bringing together India's three largest fashion e-commerce platforms under single corporate control. By 2016, HHI in fashion e-commerce had reached levels conventionally considered highly concentrated. No individual acquisition in this roll-up was evaluated in the context of the others.

This sequential dimension exposes a flaw of critical importance to the framework of India: the combination-by-combination review process achieved by the CCI is unable to identify roll-up consolidation strategies that induce competitive harm that is accrued, not transactional. The lack of any serial acquirer notification requirement - necessitating an increased examination of any acquisition following a trend of consolidation - enabled the systematic removal of independent competition in fashion e-commerce to be acquisition by acquisition.

V. INTERNATIONAL TRANSACTION VALUE THRESHOLDS: COMPARATIVE ANALYSIS

A. Germany: GWB Section 35(1a) (2017)

Germany's 9th Amendment to the GWB, which entered into force on 9 June 2017, introduced the world's first transaction value threshold for merger control.[22] Section 35(1a) provides that a merger leads to notification when the value of the transaction is more than EUR 400 million and the target has significant activities in Germany - meaning that it has turnover of more than EUR 5 million last year, or at least 500,000 registered users in Germany. The threshold has generated about 20-30 extra notifications per year in the first four years of operation- a manageable incremental load. The threshold acquired a number of media, internet, and data services that would otherwise be completely unreviewed.

B. Austria, South Korea, and the EU

Austria introduced a parallel transaction value threshold of EUR 200 million in 2017.[23] South

[20]Competition Commission of India, Order under Section 31(1), Combination Registration No. C-2014/05/176, Flipkart India Private Limited / Myntra Designs Private Limited (2014).
[21]Flipkart Press Release, 'Myntra acquires Jabong.com,' July 2016; Venture Intelligence database. Jabong was acquired for approximately Rs. 350 crore.
[22]GWB s. 35(1a) (n 6). See also Bundeskartellamt, 'The GWB Digitalisation Act: Key Provisions' (February 2021).
[23]KartG s. 9a (n 7); Austrian Federal Competition Authority, Guidance Note on Transaction Value Threshold (2017).

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Korea amended its Monopoly Regulation and Fair Trade Act in 2021 to add a KRW 600 billion (approximately USD 440 million) transaction value threshold, applicable when the target has significant domestic operations.[24] The European Union's Digital Markets Act (2022) adopted a structurally different approach, imposing notification obligations on designated 'gatekeeper' platforms for all digital sector acquisitions regardless of target revenue.[25]

Jurisdiction	TV Threshold	Year	Nexus Test	Addl. Cases/Year
Germany	EUR 400M (~Rs. 3,800 cr)	2017	EUR 5M turnover OR 500K users	20–30
Austria	EUR 200M (~Rs. 1,900 cr)	2017	Significant domestic activities	5–10
South Korea	~USD 440M (~Rs. 3,700 cr)	2021	Significant domestic operations	10–20
India (Proposed)	Rs. 2,000 crore	Proposed	Rs. 200 cr turnover OR 10L users OR Rs. 500 cr VC	~20–30 (est.)

Table 2: Comparative Transaction Value Thresholds

The proposed Rs. India threshold of 2,000 crore is adjusted between the EUR 400 million equivalent (around Rs. 3,800 crore) and Austrias EUR 200 million (approximately rs). 1,900 crore) which is indicative of the size of the Indian economy and the average value of transactions that have been conveyed in the Indian digital market acquisitions. According to the experience of similar jurisdictions, this limit is projected to bring about 20-30 more notifications annually - far short of the processing capacity of the CCI, especially with the addition of the Green Channel mechanism introduced by the 2023 Amendment to overlapping combinations.

[24] MRFTA (n 8); Korea Fair Trade Commission, 'Revision of M&A Reporting Rules' (2021). Threshold: KRW 600 billion (~USD 440 million).
[25] DMA (n 9), Art. 14. Gatekeeper notification obligation applies regardless of target turnover or asset value for digital sector acquisitions.

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VI. LEGISLATIVE REFORM PROPOSALS

A. Proposed New Section 5(1A): Transaction Value Threshold

The most critical structural reform is the introduction of a transaction value threshold. The following draft amendment is proposed for insertion after Section 5(1) of the Competition Act, 2002:

> *'(1A) Notwithstanding sub-section (1), a combination involving a digital enterprise shall be subject to notification where — (a) the transaction value exceeds rupees two thousand crore; and (b) the target enterprise satisfies any one of the following conditions: (i) substantial business operations in India, as defined in Explanation (c) below; or (ii) turnover in India exceeding rupees two hundred crore in any one of the three preceding financial years; or (iii) an active user base in India exceeding ten lakh persons in any one of the three preceding years; or (iv) cumulative investment received exceeding rupees five hundred crore in the three years preceding the transaction.'*
>
> *Explanation. — For the purposes of this sub-section — (a) 'digital enterprise' means any enterprise primarily offering services through digital platforms, including e-commerce, over-the-top services, food aggregation, ride-hailing, digital payments, or cloud-based services; (b) 'transaction value' includes all direct and indirect consideration including cash, shares, earnouts, assumed debt, and licensing payments; (c) 'substantial business operations in India' means regular commercial activities directed at consumers or businesses in India during the twelve months preceding the transaction; (d) 'active user base' means users who engaged with the service at least once in the thirty days preceding the transaction.'*

There are a number of design characteristics that are worth explaining. The Rs. The 2,000 crore threshold is set to reflect transactions of true competitive interest and to avoid compliance costs to smaller deals. Zomato-Blinkit takeover (Rs. Rs. 4,447 crore) and the Myntra-Flipkart acquisition (Rs. 2,000 crore) would have easily hit this mark. The four other nexus tests are used to make sure the provision covers nascent platforms that have a large competitive footprint, but have not yet monetised their users. Competitive relevance of network effects at scale in the digital markets in India is indicated by the user base nexus of ten lakh (one million) active users. The nexus of VC investments in the amount of Rs. Captures of 500 crore include startups that have high levels of professional investment and these are captures that are made by investors who evaluate companies as having high competitive potential.

B. Proposed New Section 20(4A): Digital Market Assessment Criteria

The jurisdictional gap is dealt with by the transaction value threshold. The assessment gap

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needs to be addressed concurrently in legislation. The proposed amendment in the form of a draft that can be inserted after Section 20(4) is as follows:

> *'(4A) In assessing any combination involving a digital enterprise under sub-section (4), the Commission shall additionally consider — (a) Potential and Innovation Competition: (i) whether the target enterprise is, or would likely become within a foreseeable period, an effective competitor, having regard to its growth trajectory, funding history, business model, and management statements; (ii) the impact of the combination on the rate and direction of innovation, including the elimination of parallel research and development programmes; (iii) whether the combination eliminates a maverick enterprise that has been constraining the acquiring enterprise's competitive behaviour; (b) Data and Network Effects: (i) the competitive significance of data accumulated by the parties, individually and in combination; (ii) the effect of combining the parties' datasets on barriers to entry for potential competitors; (iii) network effects and their impact on market contestability following the combination; (c) Ecosystem and Sequential Consolidation Effects: (i) the combined enterprise's position across multiple related digital markets; (ii) the potential to leverage market power from one digital market to adjacent markets; (iii) the pattern of past acquisitions by the acquiring enterprise in the same or adjacent digital markets in the preceding five years.'*

Directly in this section, section 20(4A)(c)(iii) deals with the sequential roll-up issue that was evident in the Flipkart-Myntra-Jabong merger. This provision deters the incremental acceptance of a roll-up strategy, which, when considered in its entirety, produces unacceptable market concentration, by obliging the CCI to evaluate the acquisition track record of the acquirer during the last five years.

C. Proposed New Section 5A: Serial Acquirer Notification

Roll-up consolidation strategies entails small transactions each, which have a cumulative effect of creating a huge market concentration. A new Section 5A would also state that any enterprise that has made three or more acquisitions in any 36-month period in a particular digital sector must disclose any further acquisitions in the same or an adjacent digital sector, in connection with which thresholds under Section 5 or Section 5(1A) are otherwise satisfied. Safe harbour would be applicable in case of acquisitions in which the target turnover is not more than Rs. in India. Its active user base and 25 crore is not more than two lakh Indian users, which is not enough to pose compliance burden on the real de minimis acquisitions.

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VII. ADDRESSING ANTICIPATED OBJECTIONS

A. Acqui-hire Concerns and Startup Exit Pathways

Another argument often made against enhanced merger control in online markets is that it will destroy the acquisition exit mechanism of startup founders and investors. This objection is confusing two very different things: acquisitions of nascent competitors by dominant platforms with strategic intent to eliminate them, and acquisitions by a broad variety of non-dominant acquirers to actually integrate or diversify. The latter category is not influenced by the proposed reforms. The threshold value of the transactions of Rs. The 2,000 crore does not forbid acquisitions, it only needs to be notified and reviewed by the regulatory authorities. Most of these reviews in similar jurisdictions are approved, usually at the Phase I level. The experience of Germany proves that a transaction value test does not affect M&A market significantly.

B. CCI Institutional Capacity

A second objection is related to the institutional ability of the CCI to evaluate complex market acquisitions that are digital. This is a valid concern but one that would be best dealt with by capacity building instead of sustaining a poor regulatory framework. The following should accompany the offered reforms: creation of a dedicated Digital Markets Division within the CCI to have specialised economists and data scientists; the introduction of a roadmap of the implementation over 1824 months to enable the capacity building until the transaction value threshold comes into force; and publication of substantive methodology guidelines on digital market merger evaluation. The Green Channel mechanism of the 2023 Amendment has a natural complement: the combinations notified under the new transaction value threshold but containing no substantive overlaps can be delegated to the Green Channel to receive a simplified deemed approval, so the CCI resources can be focused on cases that are actually disputed.

VIII. CONCLUSION

The Competition Act, 2002 in India was passed to ensure competition and innovation are not suppressed due to the centralization of economic power. The risk to competition most typical of our era in the digital economy in India, which has produced more than 100 unicorns, tens of billions of dollars of venture capital annually, and is expected to reach a valuation of over $1 trillion by 2030, is the buying of a promising competitor by a large platform, at a price that reflects exactly the competitive value that the existing regulatory framework is meant to

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safeguard.

What makes the present Section 5 threshold architecture ironic is the fact that it quantifies regulatory jurisdiction by examining the current financial size of merging parties in a backward manner, when the competitive harm that it seeks to avoid is decidedly forward-looking. A company that is not a substantial force in the market yet will become a challenge in three years, but has little revenue is completely out of the regime. It does not matter by what amount the dominant acquirer is actually paying, which is directly equivalent to the valuation of the market of that particular startup with respect to its future competitive importance. Germany, Austria, South Korea, and Japan all realised and rectified this structural deficiency with transaction value thresholds. The more ambitious gatekeeper framework has been implemented in the Digital Markets Act by the EU. In 2019, the CLRC of India suggested taking into account a transaction value threshold. Today four years and a Competition Amendment Act later, the gap still exists.

The changes suggested by this article - a new section number 5(1A) of adding a Rs. The minimum structural amendments needed to raise the merger control regime in India to the level the fast-changing digital economy demands are 2,000 crore transaction value threshold, a new Section 20(4A) that requires an assessment of the potential competition, innovation, data, and ecosystem impacts, and a new Section 5A establishing a serial acquirer notification obligation. In their absence, the competition law in India will keep on doing exactly what its name does not suggest: conducting the buying out of competitive futures in the markets, which matter most.