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# **CONCEPT OF MERGER AND ACQUISITION UNDER COMPETITION ACT, 2002: AN ANALYSIS**

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## **ABSTRACT: -**

This paper analyses the effectiveness of the Competition Act 2002 in regulating mergers and acquisition. It examines the legal framework which focuses on the jurisdiction thresholds notification i.e., specific financial and operational criteria and the substantive “Appreciable Adverse Effect on Competition” (AAEC). Through an in-depth analysis of key case laws this research evaluates the successes and shortcomings of the current regulatory regime. The findings indicate that while the Act has been effective in controlling the merger & acquisition in the traditional sector, its core principles are strained by the unique way of the digital economy. The paper concludes by arguing that the law is not sufficient to address the emerging issues like ‘killer acquisition’ and offers policy recommendations to enhance the regulatory framework to better protect market competition.

**Keywords:** Competition Act, 2002, Mergers and Acquisitions, Appreciable Adverse Effect on Competition (AAEC), Competition Law, Digital Economy, Killer Acquisitions, Market Regulation, Competition Commission of India, Antitrust Enforcement

## **INTRODUCTION: -**

Mergers and Acquisition (M&A) mean consolidation of companies or assets through various financial transactions. It happens when two companies agree to join to become a new entity, combining their resources and operations. An acquisition is when one company acquires most or all of another company to take control of it.

M&A are fundamental to corporate strategy and economic evolution, allowing firms to expand, achieve economic goals and remain competitive in the global market. The primary objective is to increase a company's market share

However, the consolidation of economic power through M&A can pose a significant threat to market competition, leading to concentrated markets, higher consumer prices and stifled innovation. To prevent such anti-competitive outcomes, the modern economy relies on the robust legal framework for merger control. In India this responsibility is in the Competition Act 2002, which aims to protect consumers interest, promote and sustain competition and ensure freedom of trade. It regulates merger and acquisition by empowering the Competition Commission of India (CCI) to review and approve or reject the deals. The Act's provisions for regulating 'Combinations' is its main function, designed to balance the economic benefits as well as to maintain a competitive market.

### **RESEARCH PROBLEM: -**

While the Competition Act provides a robust legal framework, its application is being challenged by the rapid evolution of the digital economy. The traditional threshold for notifying the CCI are based on the assets and turnover of the companies which often fails to capture deals involving high values. This creates a regulatory gap allowing potentially harmful things like 'killer acquisitions'.

### **HYPOTHESIS: -**

The hypothesis of this research is that the Competition Act 2002 is an effective and robust legal framework for promoting a competitive market environment in India through the proactive regulations of merger and acquisition. This paper also hypothesized that the recent introduction of the "Deal Value Threshold" in the Competition Act will significantly enhances the CCI's ability to scrutinise and regulate mergers and acquisitions deals, thereby better protecting market competition and fostering innovations.

### **RESEARCH METHODOLOGY: -**

This paper employs a qualitative research design using a blended approach of doctrinal, analytical and critical methodologies.

### **SCOPE AND OBJECTIVES: -**

-The paper will examine the legislative and regulatory framework of mergers and acquisitions governed under the Competition Act, 2002 in India, focusing primarily on Sections 5 and 6 related to combinations (mergers, acquisitions, amalgamations).

- It will analyze the procedural requirements introduced by the Competition Commission of India (CCI) for notification, approval, and scrutiny of combinations exceeding specified asset and turnover thresholds.
- It will consider landmark judgments and case laws shaping the interpretation and enforcement of merger control provisions in India.

The paper will also assess challenges faced by businesses in compliance, including the role of deal value thresholds, gun-jumping penalties, and cross-border M&A considerations.

## **LEGAL FRAMEWORK FOR M&A UNDER THE COMPETITION ACT, 2002: -**

The Competition Act 2002 is the fundamental piece that administers mergers and acquisitions (Combination) in India. The Competition Act was establishment to promote the economic development of the nation. This act regulates and foresees anti-competitive practices, fosters and sustains market competition, secures consumer interests and guarantees liberty of commerce in markets in India. This Act is concerned with the following areas<sup>1</sup>:

1. Prevention of Anti- competitive agreements
2. Prevention of misuse of dominant position
3. Supervision of combinations, i.e. mergers and acquisitions

Merger is when two companies combine to form a new single establishment. On the other hand, an acquisition happens when an enterprise acquires another company. The Competition Commission on India is tasked with assessing and overlooking mergers and acquisitions in India.

Section 5 and 6 of the Competition Act deals with the regulation of mergers and acquisitions. The Act describes the term Combination under section 5. It defines a Combination as the acquisition of one or multiple enterprises by one or more individuals, mergers or amalgamation of an enterprise if it meets the jurisdictional thresholds that have been set down by the Competition Commission of India<sup>2</sup>. The definition is divided into three primary categories:

- Acquisition of control, shares, voting rights or assets- This refers to one or more

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<sup>1</sup> Satyam Sharat, Mergers and Acquisitions Under The Competition Act, 2002, Manupatra (Feb. 13, 2002), <https://articles.manupatra.com/article-details/Mergers-Acquisitions-Under-the-Competition-Act-2002> (last visited Sep. 25, 2025).

<sup>2</sup> The Competition Act, No. 12 of 2002, s. 5 (India).

persons or enterprises acquiring a certain level of control or interest in another enterprise.

The key is that the acquisition must meet the financial thresholds specified in the Act, which are based on the combined assets or turnover of the parties involved. This include direct or indirect acquisitions<sup>3</sup>. Acquisition of control by a person over an enterprise where the person already has control over a competing enterprise is designed to specifically address potential anti-competitive behaviour.

- Merger or Amalgamation of enterprises- This cover transactions where two or more enterprises combine to form a new entity or where one enterprise merges into another. The combined assets or turnover of the merged or amalgamated entity must meet the specified thresholds for it to be considered as a Combination.

Thus, the definition of a combination is not absolute, it is contingent upon meeting the financial thresholds as given in the act.

### **JURISDICTIONAL THRESHOLD: -**

The jurisdictional thresholds are the specific criteria that determine whether a merger or acquisition falls under the regulatory framework of the Competition Commission of India. These thresholds act as a filter to ensure that the CCI's resources are focused on transactions that have potential to cause an Appreciable Adverse Effect on Competition (AAEC) in the market.

Under section 5 of the Act the jurisdictional thresholds define which transactions are considered a combination and are thus subject to mandatory notification to the CCI<sup>4</sup>. These financial triggers are designed to capture transactions that have the potential to cause a significant effect on competition in the market.

This section covers direct acquisition where one or more persons or enterprises acquire control, shares, voting rights or assets of another enterprise<sup>5</sup> as well as indirect acquisition when a person with existing control acquires control of another enterprises operating in the same line of business<sup>6</sup>. It also covers corporate Mergers and Amalgamations where legal entities are

<sup>3</sup> Competition Commission of India, Regulation of Combinations, <https://www.cci.gov.in/regulation-of-combination> (last visited on Sep. 25, 2025).

<sup>4</sup> The Competition Act, 2002, No. 12 of 2003, s. 5 (India).

<sup>5</sup> The Competition Act, 2002, No. 12 of 2003, s. 5(a)(India).

<sup>6</sup> The Competition Act, 2002, No. 12 of 2003, s. 5(b) (India).

fused into a single entity or new entity is formed by combining existing ones<sup>7</sup>.

1. Enterprise- level Thresholds-This threshold is based on the combined assets or turnover of the enterprises directly involved in the transaction. A deal qualifies as a combination if the enterprises jointly have
  - Assets in India of the value of more than ₹ 1000 crores or a turnover in India of more than ₹3000 crores<sup>8</sup>, or
  - in India or outside India, in aggregate, the assets of the value of more than 500 million US dollars, including at least ₹500 crores in India or turnover more than 1500 million US dollars, including at least ₹1500 crores in India.
2. Group level Thresholds- This set of threshold applies when the enterprises belongs to a larger business group. A transaction is a combination if the larger group to which enterprise will belong after the acquisition has
  - Assets in India of the value of more than ₹4000 crores or a turnover in India of more than ₹12000 crores, or combined worldwide assets of more than \$ 2 billions, with assets in India of at least ₹500 crores or a combined worldwide turnover \$ 6 billions with a turnover in India of at least ₹ 1500 crores<sup>9</sup>.

**DE MINIMIS EXEMPTION** - This concept relates to an exemption from the mandatory notification and approval requirements for combinations. The de minimis exemption is not explicitly stated in the original Competition Act but has been introduced and refined through government notifications under Section 5 of the Act. The Ministry of Corporate Affairs (MCA) issues regular notifications specifying asset and turnover value limits below which a transaction is exempted from the requirement to notify the CCI. The exemptions applies if the target enterprises assets in India do not exceed ₹ 450 crores or the turnover does not exceed ₹ 1250 crore. Transactions meeting this criterion are exempted from CCI notification requirements as they are considered unlikely to have a significant competitive impact in the relevant market.

### **REGULATION OF COMBINATION: -**

Section 6 of the CCI Act provides a comprehensive legal framework for regulating combinations that could potentially have an adverse effect on competition in the Indian market.

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<sup>7</sup> The Competition Act, 2002, No. 12 of 2003, s. 5(c) (India).

<sup>8</sup> Id.

<sup>9</sup> Ibid.

At its core, this prohibits any combination that causes or is likely to cause an “Appreciable Adverse effect on Competition” within the relevant market in India. Any such combination is declared void<sup>10</sup>, emphasising the preventive nature of the regulation to curb practices that may harm the competitive market.

This provision empowers the Competition Commission of India (CCI) to monitor and control combinations to preserve a fair competitive environment. The procedural framework begins with the mandatory notification requirements outlined in this section. The parties proposing a combination must notify the CCI within 30 days of either the approval of the combinations by the board of Directors or execution of any agreements that result in the acquisition. The notification must be made in the prescribed format accompanied by the applicable fees. This serves as the formal trigger for the CCI’s review process.<sup>11</sup>

This section also introduces an obligation that no Party can consummate the combination until either 210 days pass from the date of notification or until the CCI grants approval, whichever is earlier. This clause prevents premature implementation, hence guarding against adverse market impacts in case the CCI finds the combination anti-competitive.

Following the notification, the CCI conducts an in-depth assessment as per section 29, 30 & 31 of the Act. The Commission evaluates whether the combination causes AAEC by analyzing factors like market shares, creation of monopolies or negative impact on consumers and competitors. The CCI may approve the combination unconditionally, impose conditions or modifications to reduce the adverse impacts or prohibit the Combination. This detailed investigation ensures that only combinations supportive of competitive markets are allowed<sup>12</sup>.

While Section 6 mandates rigorous control, it also includes exemptions to balance regulatory oversight with practical business realities. It provides an exemption for acquisitions by banks or financial institutions in cases where borrowers default on loans; such acquisitions need not undergo full notification and approval but must still be reported to the CCI within seven days.

This exemption reflects an understanding of the banking domain’s operational needs while

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<sup>10</sup> The Competition Act, 2002, No.12 of 2003, s. 6(1) (India).

<sup>11</sup> The Competition Act, 2002, No. 12 of 2003, s. 6(2) (India).

<sup>12</sup> The Competition Act, 2002, No. 12 of 2003, s. 6(3) (India).

maintaining transparency with the regulator<sup>13</sup>.

The entire regulatory scheme under this section is designed to address all major types of combinations including direct acquisitions, indirect acquisitions, mergers, and amalgamations. As a whole, this combination regulation procedure involves mandatory pre-notification, a statutory waiting period (standstill obligation), intensive competitive impact assessment, and the authority to approve, modify, or block combinations. It strikes a balance between enabling business growth through combinations and protecting market competition to promote consumer welfare and economic efficiency.

### **SIGNIFICANCE OF SECTION 20(4) OF COMPETITION ACT: -**

Section 20(4) of the Competition Act, 2002, is the substantive assessment provision that empowers the Competition Commission of India (CCI) to conduct a thorough inquiry into whether a combination is likely to cause an Appreciable Adverse Effect on Competition (AAEC) in the relevant market in India. It essentially provides the checklist of factors the CCI must consider during its review process. It mandates that the CCI, in determining the AAEC of a combination, "shall have due regard to all or any of the following factors<sup>14</sup>":

- Market share, concentration, and entry barriers.
- The extent of effective competition likely to sustain in the market.
- The possibility of the combination resulting in the parties' ability to significantly and sustainably increase prices or profit margins (known as the "SSNIP" test in competition analysis).
- The nature and extent of innovation and the availability of substitutes.
- The relative advantage, by way of contribution to economic development, provided by the combination.
- Whether the business being acquired is a failing business (the "failing firm defense").
- Vertical integration, customer dependence, and countervailing buyer power.

Section 20(4) is the functional engine that complements and validates the jurisdictional triggers established by sec 5&6. It is used after a combination is identified under sec 5 to determine whether it is harmful to competition. It provides the tools to apply the prohibition given under sec 6. It transforms the general prohibition into an enforceable legal test. The CCI uses the

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<sup>13</sup> The Competition Act, 2002, No. 12 of 2003, s. 6(4)& (5) (India).

<sup>14</sup> The Competition Act, 2002, No. 12 of 2003, s. 20(4) (India).

factors given to decide whether to approve or invalidate the combination.

In essence, Section 5 establishes the "what" (what constitutes a combination), Section 6 establishes the "when" (when to notify) and the "consequence" (it's void if it causes AAEC), and Section 20(4) establishes the "how" (the analytical framework for determining AAEC).

### **ROLE OF CCI: -**

The Competition Commission of India (CCI), a quasi-judicial body, plays a crucial and mandatory procedural role in the case of a combination, primarily under Sections 5, 6, 29 and 31 of the Competition Act, 2002. This role is one of pre-combination scrutiny and approval, following a structured process that ensures the proposed transaction does not cause an Appreciable Adverse Effect on Competition (AAEC) in India. The amendment also introduced the concept of "clock stops" for the parties to furnish information<sup>15</sup>. The term "clock stop" (or "stop-the-clock") in the context of the Competition Commission of India (CCI) merger review process means the suspension of the statutory timeline the CCI has to approve a combination.

This mechanism is primarily invoked when the CCI requires the parties to the combination to furnish additional information or documents.

The CCI's review is a time-bound process that was significantly streamlined by the Competition (Amendment) Act, 2023, which reduced the statutory review periods.

Phase I: Prima Facie Opinion- The CCI's first procedural step after receiving a valid notice is to form a prima facie opinion under Section 29(1) as to whether the combination caused or is likely to cause an AAEC. The time period for the CCI to form this prima facie opinion is thirty working days (new timeline under 2023 amendment act is 30 calendar days). If the CCI finds no AAEC, the combination is approved under Section 31(1). Most combinations are cleared at this stage. If the CCI does not pass any order within the maximum statutory period, the combination is deemed to be approved. The CCI also introduced the "Green Channel" route for specific non-complex combinations (where there are no horizontal, vertical, or complementary overlaps between the parties or their groups), which grants deemed approval immediately upon acknowledgement of a valid filing.

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<sup>15</sup> Competition Act, 2002, \S 29(1) (India) (as amended by The Competition (Amendment) Act, 2023).

Phase 2: Detailed Investigation- If the CCI is of the prima facie opinion that the combination warrants a detailed investigation, then under sec 29(1) it mandatorily issues a show cause notice to the parties, asking them to respond within 30 days of the receipt of the notice and explain why an investigation should not be conducted.

After receipt of the response, the CCI may direct the Director General to investigate the combination in detail<sup>16</sup>. If the investigation continues, the CCI may issue a Statement of Objections detailing its concerns. In some cases, the CCI may also direct the parties to publish the details of the combination (typically in newspaper and on the CCI website) to invite objections from the public and any affected third parties like competitor, supplier or consumers. This is a mandatory step under section 29(3).

The overall statutory review timeline for the CCI to pass a final order on the combination was 210 days (reduced by the Amendment Act, 2023 to 150 calendar days)<sup>17</sup> from the date of the notice.

#### Final order & Remedies (Modifications) Orders under Section 31

After the detailed investigation, the CCI can pass one of three orders under Section 31<sup>18</sup>:

1. Approval (Section 31(1)): The CCI clears the combination if it finds no AAEC.
2. Conditional Approval (Section 31(7)): The CCI finds AAEC but proposes Modifications (remedies) to the structure of the combination to eliminate the adverse effects. If the parties accept the modifications, the combination is approved subject to compliance.
3. Prohibition (Section 31(11)): The CCI prohibits the combination if it finds that the AAEC cannot be eliminated by suitable modifications.

The power to impose modifications is a powerful procedural remedy to shape market structure. This power was notably used in the merger between Sun Pharmaceutical Industries Ltd. / Ranbaxy Laboratories Ltd.,<sup>19</sup> where the CCI mandated the divestiture (modifications) of seven brands to preserve competition in specific drug markets. Similarly, in the global cement major

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<sup>16</sup> Id. \S 29(5).

<sup>17</sup> Id. \S 6(2A) (as amended by The Competition (Amendment) Act, 2023).

<sup>18</sup> Id. \S 31.

<sup>19</sup> In re Sun Pharm. Indus. Ltd. / Ranbaxy Labs. Ltd., Combination Registration No. C-2014/05/174 (CCI May 27, 2014).

merger of Holcim Ltd. / Lafarge S.A.<sup>20</sup>, the CCI ordered significant, complex asset sales (divestitures) to address horizontal overlaps in the cement market, demonstrating the CCI's procedural commitment to the AAEC standard.

Furthermore, the procedural obligation of utmost good faith was reinforced in Amazon.com NV Investment Holdings LLC / Future Retail Ltd.,<sup>21</sup> where the CCI revoked its earlier approval order due to the concealment of information and false statement and imposed a penalty for the suppression and misrepresentation of material information by the notifying party, underscoring that approval is contingent on truthful disclosure.

#### Penalty for Gun-Jumping (Violation of Standstill)

Failure to notify a notifiable combination or the consummation of a combination before CCI approval (gun-jumping) is a serious procedural offence. Section 43A of the Act empowers the CCI to impose a penalty of up to one percent of the total turnover or the assets of the combination, whichever is higher. Landmark cases like SCM Soilfert Ltd. v. CCI and Thomas Cook (India) Ltd. v. CCI<sup>22</sup> established that gun-jumping occurs even if only a part of an interconnected transaction is consummated before filing, underscoring the strict interpretation of the standstill obligation.

### CASE ANALYSIS: -

#### **Competition Commission of India v. Thomas Cook (India) Ltd<sup>23</sup>.**

Facts: The CCI v. Thomas Cook (India) Ltd. case is pivotal for its treatment of “gun-jumping” and composite combinations under Indian competition law.

The case arose when Thomas Cook (India) Limited sought to acquire a majority stake in Sterling Holiday Resorts (India) Limited through multiple steps, which included acquiring shares via open market purchases before formally notifying the Competition Commission of India (CCI) as required under the Competition Act, 2002. This sequence of actions involved open offers and preferential allotments, all linked to the eventual acquisition of control—

<sup>20</sup> In re Holcim Ltd. / Lafarge S.A., Combination Registration No. C-2014/07/193 (CCI Mar. 30, 2015).

<sup>21</sup> In re Amazon.com NV Inv. Holdings LLC / Future Retail Ltd., Combination Registration No. C-2019/09/688 (CCI Dec. 17, 2021).

<sup>22</sup> SCM Soilfert Ltd. v. Competition Comm'n of India, (2018) 7 SCC 780 (India); Thomas Cook (India) Ltd. v. Competition Comm'n of India, (2018) 7 SCC 791 (India).

<sup>23</sup> Competition Commission of India v. Thomas Cook (India) Ltd., Combination Regn. No. C-2014/03/160, Order (CCI, 2014).

constituting what is known as a composite combination.

Section 6(2) of the Competition Act, 2002, mandates that no combination should take effect until 210 days after notification to CCI or until the regulator's approval. The obligation to notify applies jointly to all parties engaged in inter-connected transactions<sup>24</sup>.

Legal Questions:

1. What constitutes “gun-jumping” in the context of transactions forming a composite combination?
2. Do interconnected transaction steps necessitate blanket advance CCI clearance before any components are implemented?
3. Is mens rea relevant to the imposition of a penalty for gun- jumping?

Held: - CCI found that Thomas Cook had consummated part of the transaction—by acquiring 9.93% of Sterling through open market purchase—before seeking CCI approval for the entire composite combination. This act amounted to ‘gun-jumping’, violating the suspensory regime which demands standstill pre-appraisal. CCI imposed a penalty of INR 1 crore under Section 43A. Thomas Cook, on appeal, argued it was a bona fide open market transaction independent of control<sup>25</sup>.

- Where transactions are interconnected with a common objective, the entire suite of steps comprising the combination must be notified and cannot be partially implemented pending approval<sup>26</sup>. An acquirer cannot artificially segment the process to evade ex ante scrutiny.
- Mens rea or bona fide belief is not relevant; the infraction is procedural and the penalty—though discretionary within statutory limits—serves to deter non-notification<sup>27</sup>.
- The regime protects market integrity, preventing deals with potential appreciable adverse effect on competition (AAEC) from being partly or wholly completed prior to regulatory vetting.

By penalizing Thomas Cook, CCI sent a clear message: parties must treat all interconnected steps enabling combination (such as inter-related share purchase agreements, rights issues, or

<sup>24</sup> The Competition Act, 2002, No. 12 of 2003, s. 6(2) (India).

<sup>25</sup> Id.

<sup>26</sup> CCI Combination Regulations, 2011 (as amended), Reg. 9(4).

<sup>27</sup> Section 43A, Competition Act.

open market operations) as a single notifiable event, and any step cannot proceed before clearance<sup>28</sup>.

## **2. Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors<sup>29</sup>.**

Facts: Essar Steel India Limited was one of India's largest steel manufacturing companies that faced financial distress and insolvency. The company was admitted to the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016. During the resolution process, two rival resolution applicants submitted competing plans to acquire Essar Steel's assets and management control. These plans constituted a "combination" under the Competition Act, 2002, as they involved acquisition of control exceeding the thresholds under Section 5 of the Competition Act. The Committee of Creditors (CoC), responsible for approving resolution plans, initially intended to approve one of the plans without first securing approval from the Competition Commission of India (CCI). The resolution professional and some stakeholders argued that CCI approval could be obtained after CoC approval, citing procedural expediency under IBC.

Legal Issue: Whether prior approval from the CCI is mandatory before the Committee of Creditors can approve a resolution plan that qualifies as a combination under the Competition Act, or if the approval can be obtained post-CoC approval without violating merger control norms.

Judgement: The Supreme Court held that mandatory prior approval from CCI is a necessary precondition before CoC votes to approve a resolution plan involving a combination. The Court relied on the plain language of the proviso to Section 31(4) of the IBC, which was amended in 2018 to explicitly require a no-objection certificate from CCI ahead of CoC's approval. The Court emphasized protecting the Competition Act's suspensory merger control regime from circumvention by insolvency resolution processes. This approach ensures that combinations detrimental to competition are intercepted prior to asset transfer and corporate control changes.

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<sup>28</sup> Thomas Cook, Combination Regn. No. C-2014/03/160 (CCI, 2014).

<sup>29</sup> Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors., Civil Appeal No. 8766 of 2019, Supreme Court of India (2023).

## CRITICAL ANALYSIS: -

The combination provisions under the Competition Act, 2002, initially relied on traditional financial metrics, which led to significant enforcement gaps. The Competition (Amendment) Act, 2023 introduced transformative changes aimed at addressing these gaps, particularly in the digital economy, while also streamlining the review process. The original framework for regulating mergers and acquisitions (M&A) in India was primarily based on two rigid, quantitative jurisdictional tests under Section 5 of the Competition Act, 2002: assets and turnover thresholds.

The core flaws in the original framework were:

1. Failure to Capture "Killer Acquisitions" in the Digital Economy: A killer acquisition refers to a case where an established often dominant firm acquire a potential rival, typically a small, innovative startup with the primary intention of discontinuing or suppressing the target firm's innovation project to reduce the future competition and protect the acquirer's existing market position & profits. This type of acquisition kills a competitive threat and was the most significant flaw. Many high-value transactions, especially those involving digital start-ups and tech companies, bypassed mandatory notification. Digital companies often command in valuation (as reflected by the acquisition price) yet have minimal physical assets or low/negligible turnover (as they prioritize user growth over immediate revenue). The traditional asset/turnover thresholds were therefore not triggered, allowing potentially anti-competitive mergers (known as "killer acquisitions") to escape scrutiny.
2. Extended and Uncertain Review Timelines: The statutory limit for the Competition Commission of India (CCI) to review a combination was 210 days. This long period created transaction uncertainty and increased the cost of doing business, often placing Indian timelines out of sync with faster global regulatory standards.
3. Ambiguity in the Definition of 'Control': The term "control" was interpreted through various CCI orders, often causing uncertainty for parties regarding the notifications of minority acquisitions that conferred special rights. This lack of a clear statutory definition led to inconsistent filing practices and compliance headaches.

## **CHANGES INTRODUCED BY THE COMPETITION (AMENDMENT) ACT, 2023: -**

The 2023 Amendment Act introduced several key provisions to modernise the combination regime, largely curing the gaps.

**The deal value thresholds-** The Amendment introduced the deal value threshold as an additional mandatory jurisdictional criterion. This concept was officially introduced into the Indian merger control regime on Sep 10, 2024. It is a jurisdictional test introduced in competition law to determine which merger & acquisition must be notified to and approved by the competition commission. Unlike traditional tests based on the parties assets or turnover, the deal value of the transaction itself exceeds a specified monetary limit. Under this a transaction must be notified if the value of the deal exceeds ₹ 2000 crores (approximately \$ 240 million) where the acquired entity has substantial business operation in India. This is a progressive approach which effectively brings killer acquisition in the digital market and other high value transactions involving non-traditional assets like data, intellectual property and user bases into the CCI's ambit.

Why was it Introduced?

The deal value threshold was introduced to address a significant regulatory gap. Previously, the CCI's jurisdiction was based on the assets and turnover of the merging companies.

However, in the digital economy, many tech startups and innovative companies have a high market valuation and user base but very few physical assets or little to no turnover. This meant that large, potentially anticompetitive acquisitions of these companies (often referred to as "killer acquisitions") were not being reviewed by the CCI. By introducing the deal value threshold, the government empowered the CCI to scrutinize these high-value transactions, ensuring that deals that could harm competition are subject to regulatory oversight, regardless of the target company's traditional financial metrics.

Its Advantages:

1. Capture killer acquisition - Many innovative startups, like those in the digital and pharmaceutical sectors, are acquired for a high price (reflecting their future potential) but have minimal current revenue or assets. They would have traditionally slipped below the mandatory asset/turnover thresholds. The DVT ensures these high-value,

- potentially anti-competitive deals (known as "killer acquisitions") are reviewed.
2. Reflects Market Potential- The amount an acquiring firm is willing to pay often serves as a better indicator of the target's market potential and competitive significance than its current, low financial figures. A high deal value signals that the acquirer perceives a major future competitive threat or a valuable strategic asset worth eliminating.
  3. Strengthens Ex- Ante Control- By reviewing these transactions before they are completed (ex-ante), competition authorities can prevent irreversible harm to market competition, which is significantly more effective than attempting to remedy a completed anti-competitive merger (ex-post).
  4. Addresses Digital Market Challenges- The threshold ensures that deals involving technology and startup companies, whose influence is more about innovation, data, or market disruption than current revenue, are reviewed for competition risks.
  5. Closes Regulatory Gaps- Transactions structured to avoid turnover or asset-based scrutiny are now within the ambit of competition review, reducing loopholes and regulatory evasion.

## **CONCLUSION AND SUGGESTIONS: -**

### **CONCLUSION-**

The concept of merger and acquisition under the Competition Act, 2002, is fundamental to regulating corporate combinations that could potentially impact market competition in India. The introduction of deal value as a key threshold for notification has greatly enhanced the Competition Commission of India's (CCI) ability to capture significant, high-value transactions that traditional asset or turnover thresholds might overlook—especially in dynamic sectors like technology and digital markets. Deal value reflects the economic reality and strategic importance of transactions, ensuring that combinations with potential to appreciably affect competition are scrutinized, regardless of the target's current financial scale.

The CCI has proven effective in managing combinations by enforcing a clear, transparent procedural framework with defined timelines and rigorous investigations. Its evolving merger control regime, supported by landmark case law, demonstrates a balanced approach that allows business growth through consolidation while safeguarding competitive market structures and consumer interests. The CCI's powers to impose conditions, require divestitures, and penalize non-compliance (gun-jumping) strengthen deterrence against anti-competitive mergers.

## SUGGESTIONS-

1. Widening Threshold Sensitivity Using Deal Value- Expanding reliance on deal value thresholds improves merger control sensitivity, especially for sectors where traditional financial metrics are insufficient. It is recommended that India continually calibrate these thresholds to reflect market realities and emerging business models, ensuring no critical transaction escapes oversight.
2. Strengthening CCI Investigative Capabilities- To maintain efficiency amidst increasing deal complexity, the CCI should invest in specialized expertise and technological tools for analyzing nuanced economic effects and cross-border transactions. Enhanced training and collaboration with international agencies will improve effectiveness.
3. Clearer Guidance on Composite and Complex Combinations- Issuing detailed guidelines on what constitutes composite combinations will reduce ambiguity and avoid regulatory evasion. Clear definitions and illustrative case examples will assist compliance and timely notification.
4. Enhanced Stakeholder Awareness and Compliance- CCI and industry bodies should promote awareness programs to educate corporates and legal advisors about merger control obligations, including the significance of deal value thresholds and consequences of non-compliance. Encouraging voluntary early notification can reduce disputes and delays.
5. Streamlining Procedures with Digital Platforms- Streamlining filing and review processes through secure digital platforms with transparent status tracking can improve procedural efficiency for CCI and merging parties alike.

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