
THE PARADOX OF VALUATION IN INDIAN COMPETITION LAW: ANTITRUST OVERSIGHT, MARKET CONTESTABILITY, AND PREDATORY ACQUISITIONS

Vaishnavi Bane, Thakur Ramnarayan College of Law, Mumbai.

ABSTRACT

India's burgeoning startup economy has spurred innovation and enticed investments, but also disclosed deficiencies in the competition law regarding pre-emptive acquisitions - where dominant firms buy promising startups mainly to foreclose prospective rivals. This challenge is compounded by the "valuation paradox". This article contends that the adoption and stringent application of value-oriented parameters is not merely a legislative update but a jurisprudential necessity for safeguarding dynamic competition and consumer welfare in the Indian startup ecosystem, by analyzing jurisprudence and recent legislative amendments, and also advocates for merger criteria that emphasize the substantive market impact over formalistic parameters. Also interrogates the paradox of valuation in Indian competition law through a critical analysis of statutory thresholds, the recent introduction of a deal value threshold under the Competition (Amendment) Act, 2023, and the practical challenges of implementation. It situates the Indian experience within comparative global frameworks, particularly the German and Austrian models, and considers the implications for market contestability. Ultimately, it argues for a more inclusive and innovation-sensitive merger control regime capable of reconciling investment incentives with the preservation of competitive markets. This approach seeks to empower regulators to intervene before anti-competitive harm materializes, making legislative reforms for India's inventive and innovative economy.

Keywords: Competition Law, Indian Startup Ecosystem, Value-oriented thresholds, Killer acquisitions, Mergers.

INTRODUCTION:

Over the past 20 years, India's startup ecosystem has had a significant impact on the country's economic development trajectory. With its rapid expansion, technical upheaval, and unparalleled inflow of international funding, the Indian startup scene today embodies both the potential for innovation and the dangers of hasty consolidation. Since it offers investors liquidity and the possibility of growth through integration, acquisition by a larger incumbent is frequently the most pragmatic exit strategy for start-up businesses. However, from the perspective of competition law, these purchases might be more strategies used by dominant corporations to strategically neutralise new competitors than they are as engines of efficiency. While startups may have small balance sheets, their competitive significance is often immense, making traditional asset and turnover thresholds inadequate.

The primary hurdle is the deal value in mergers and acquisitions (M&A), particularly with regard to the way Indian antitrust authorities assess, examine, and oversee transactions. Concerns about competition and consumer protection have increased as a result of prominent market players taking over startups in recent years.

DEAL VALUE - What is the deal value?

The whole monetary worth of a transaction - one company pays to acquire another. It incorporates all considerations, including direct, indirect, immediate, deferred, cash, and non-cash payments. Valuations use established financial metrics such as the P/E ratio, enterprise value to sales, discounted cash flows, and replacement cost methods.

KILLER ACQUISITIONS - Conceptualising the threat

Large companies, firms, enterprises and large technology platforms acquire disruptive startups primarily to extinguish emerging threats.

These killer acquisitions are anti-competitive because they:-

- Foreclose future competition
- Eliminate innovation trajectories
- Become a supplement to dominant positions and leads to monopoly

To address this lacuna, the deal value threshold was devised. Instead of only considering the size of the target, the threshold captures transactions where consideration paid (deal value) exceeds a limit provided the target has a “substantial nexus” to the domestic market. This ensures scrutiny of high-value acquisitions irrespective of the target’s turnover.

Germany and Austria pioneered this mechanism in 2017, and India followed in 2023. The logic is to recognise that a high price paid for a low-revenue start-up may signal its latent competitive significance.

STARTUP DILEMMA: Survival

- killer acquisitions pose a dual threat for startups: the risk of being prematurely acquired and silenced on one hand, and the chilling effect on the broader ecosystem’s innovation and competition.
- Cultural factors, such as social risk aversion and preference for traditional careers, add yet another layer of difficulty for aspiring founders
- Many startups also lack access to effective mentorship, robust distribution networks, and reliable government support despite policy reforms
- Infrastructure gaps - like unreliable connectivity and high technology costs - inadequate intellectual property protection, and a chronic shortage of skilled talent create further obstacles, especially for startups outside major metros.
- This continuous threat of competition influences existing firms to avoid monopolistic practices such as price gouging or reduced innovation, thereby protecting consumer welfare through lower prices, better quality, and more choices.

EVOLUTION OF LAW:

The evolution of competition laws globally has mirrored economic transitions from protecting small enterprises and controlling monopolies to fostering innovation, regulating mergers, and addressing digital transformations. Competition law, also known as antitrust law in some jurisdictions, has evolved significantly over centuries to address anti-competitive practices and promote a fair market environment. Its foundations trace back to early regulatory efforts in

Roman times and English common law, where rules against unfair trade practices and monopolies first emerged.

Its foundations trace back to early regulatory efforts in Roman times and English common law, where rules against unfair trade practices and monopolies first emerged. The first modern competition laws were enacted in the late 19th and early 20th centuries, notably with the Sherman Act of 1890 and the Clayton Act of 1914 in the United States, responding to the rise of trusts and monopolies during industrial expansion. These laws aimed to curb dominant firms' abuse of market power, prevent anti-competitive agreements, and sustain economic competition.

- 1969 - Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 is enacted. ¹

The MRTP Act was India's primary competition / anti-monopoly legislation until the Competition Act replaced it.

- 2000-2003 - Competition Bill introduced in Parliament (2001), debated, and the Competition Act, 2002 was passed. ²
- The Act establishes a Commission which is duty bound to protect the interests of free and fair competition including the process of competition, and as a consequence, protect the interests of consumers
- The Competition Act, 2002 was amended by the Competition (Amendment) Act, 2007 and again by the Competition (Amendment) Act, 2009, made several changes. The MRTP Act was simultaneously repealed in 2009.
- 2019 - The CCI introduced a "Green Channel" mechanism for automated, fast-track approval of combinations that do not involve any horizontal, vertical, or complementary overlaps between the merging parties.
- 2023 - The Indian parliament passed comprehensive amendments to the Competition Act, modernizing the law to address the new-age market.

¹ *The Monopolies and Restrictive Trade Practices Act, 1969*, Act No. 54 of 1969, Dec 27, 1969.

² The Competition Act, 2002 (12 of 2003) <https://www.cci.gov.in>

In summary, competition laws have evolved from rudimentary anti-monopoly rules to comprehensive regulatory regimes designed to sustain competitive markets

THE COMPETITION (AMENDMENT) ACT, 2023

Objectives of the Act:

- It aims to ensure faster market correction and streamline competition law enforcement to protect consumer interests and promote encourage open and impartial competition
- The Act proposes new merger and acquisition (M&A) thresholds and widens the definition of anti-competitive agreements and exploitation of positions of dominance.
- It intends to establish a transparent, effective, and business-friendly mechanism for upholding competition that benefits consumers, startups, and established companies alike.
- To make Indian laws more consistent with global competitiveness norms, and to make Indian markets more investor-friendly and lucrative.

Key Provisions:

- Deal Value Threshold: Even if asset or turnover limits are not reached, a new threshold of INR 2,000 crore is introduced for required notification to the Competition Commission of India (CCI) for mergers, acquisitions, or combinations where the target has "substantial business operations" in India.
- Expansion of Anti-Competitive Agreements: This broadens the scope of Section 3 to encompass "any other" anti-competitive agreements and assumes that horizontal and specific "hub-and-spoke" arrangements will have a significant negative impact on competition (AAEC).
- Material Influence as "Control": This definition of control is updated to go beyond merely legal and ownership criteria and including the capacity to exert "material influence" over management.
- A preliminary opinion must be formed within 30 days, and the time limit for the CCI

examination of combinations has been shortened from 210 days to 150 days.

- Information Limitation Period: Provides a three-year window within which, with adequate justification, information about cartels or abuse may be submitted to the CCI.
- For a quicker and more efficient market correction, parties might use settlement and commitment methods to end competition law actions.

Judicial Decisions:

In recent years, several paramount judicial decisions have further shaped Indian competition law, strengthening enforcement and clarifying legal standards. Notably, the Supreme Court's judgment in *Competition Commission of India vs. Schott Glass India Pvt. Ltd.* (2025) set a precedent on abuse of dominance by emphasizing the necessity of an effects-based analysis rather than mere possession of dominance. The Court underscored fundamental procedural fairness, such as the right to cross-examination during investigations, thereby reinforcing due process under the Competition Act.

Additionally, the Supreme Court, in *Independent Sugar Corporation Ltd. vs. Girish Sriram Juneja* (2023), held that insolvency resolution plans involving combinations under the Competition Act require prior approval from the CCI before acceptance by creditors.

INDIAN ANTITRUST OVERSIGHT:

The Competition Commission of India (CCI) is in charge of handling antitrust (or competition) regulation in India owing to the Competition Act of 2002. The CCI oversees mergers and acquisitions in order to deter market dominance, monopolistic practices, and abuse of power. In the past, numerous high-impact tech or digital transactions were often ignored because only transactions surpassing asset or turnover requirements were analysed.

Issues with Giant Companies Acquiring Startups

Acquisitions of startups by dominant firms present a paradoxical dilemma. On the one hand, they provide investors and founders with a viable exit and enable the diffusion of innovation. On the other, they risk becoming killer acquisitions, where incumbents buy nascent rivals not to integrate but to eliminate future competition. This danger is especially pronounced in India,

where startups often escape antitrust scrutiny because of low asset or turnover values despite commanding high strategic valuations.

In the Indian context include Ola's acquisition of TaxiForSure, Flipkart's acquisition of Myntra, Zomato's acquisition of Uber Eats India, among others, all deals that avoided CCI scrutiny under earlier thresholds

Example - Zomato acquisition of Uber Eats India in 2020 for approximately \$350 million. This deal attracted limited scrutiny from the Competition Commission of India (CCI) because its deal value fell below the notification thresholds under Section 5 of the Competition Act, 2002. The acquisition significantly strengthened Zomato's dominant position in the food delivery sector, which, according to CCI's market study, was already concentrated among three major players: Zomato, Swiggy, and Uber Eats. Critics argue that this acquisition reduced competition by eliminating a major competitor, thereby exemplifying concerns over anti-competitive behavior often associated with killer acquisitions²

INDIA IN THE GLOBAL ANTITRUST DISCOURSE:

By adopting the DVT, India positions itself among progressive jurisdictions responsive to the unique dynamics of the digital economy. Unlike the US, which relies heavily on ex post litigation, or the EU, which utilises referral mechanisms, India has legislatively entrenched the DVT model. This signals a proactive regulatory philosophy that prioritises preventive oversight over remedial action.

REGULATORY CHALLENGES AND IMPLICATIONS:

- The Competition Act of 2002 stipulates thresholds for fixed assets and turnover to initiate merger reviews. This eliminates an immense number of early-stage businesses with thin budgets but strong growth and market potential, enabling "killer acquisitions" to move forward without sufficient antitrust review. A recent regulation that attempts to close this gap is the deal value threshold; nevertheless, difficulties with enforcement and valuation complexity still exist.
- Multiple statutes, including the Companies Act, SEBI Takeover Regulations, FEMA

² CCI, Zomato Media Ltd./Uber Eat's India Business Combination Case No. C-2020/01/737 (2020).

for cross-border transactions, and the Data Protection Act, must be navigated in startup M&A transactions due to complex regulatory overlap. Longer deal durations and higher compliance costs result from this regulatory complexity.

- Intangibles such as intellectual property, technological stacks, and future development possibilities make it challenging to accurately value early-stage firms. This makes it more difficult to calculate deal value for funding and regulatory purpose
- The 2023 Amendment leaves key terms such as “substantial business operations in India” undefined. Ambiguity in statutory language can create interpretive disputes, litigation risk, and uncertainty for market participants.
- Digital start-ups often operate in stealth mode, with minimal disclosures or opaque financials. Regulators face information asymmetry, making it difficult to evaluate both the potential anti-competitive effects and the counterfactual competitive scenario
- In summary, antitrust authorities stress market contestability because it is a key mechanism for sustaining competitive markets, preventing monopolistic abuses, stimulating innovation, and ensuring consumers benefit from competitive prices and choices.

MARKET COTESTABILITY

The ease with which fresh startups are able to enter or exit a market, consequently affecting the degree of competitiveness within that market, is known as market contestability. If a market has few or no obstacles to entry and exit, such as low sunk costs (expenses that cannot be recouped after leaving the market), it is deemed contestable. Even a monopoly or a small group of prominent companies are under pressure to act competitively in these marketplaces because of the real risk that possible new competitors will undermine their market share. Lower costs, increased efficiency, and a better ability to adapt to customer preferences are typically the results of this competitive pressure.

The theory of contestable markets contrasts with traditional models by focusing not just on the number of competitors, but on the threat of potential competition. This framework plays an essential role in competition law and market regulation, highlighting that reducing barriers to entry can promote more competitive market behavior even when market concentration is high.

The emphasis on contestability also helps regulators take a future-oriented approach, examining not just present market conditions but how easily new competition can arise. This is particularly crucial in fast-evolving sectors like digital markets and technology industries, where disruptive startups can rapidly challenge incumbents.

This is why antitrust authorities emphasise market contestability:

- Merger control (preventing killer acquisitions) is justified because eliminating nascent rivals reduces contestability.
- Regulatory reforms (like deal value thresholds) are designed to safeguard contestability by ensuring new entrants are not neutralised prematurely.
- Dynamic competition analysis prioritises contestability over static market share, since the real harm lies in foreclosing future rivals.

CONCLUSION:

In conclusion, antitrust authorities emphasize market contestability as a vital pillar to preserving competitive markets. The adoption of the deal value threshold (DVT) in India through the Competition (Amendment) Act, 2023 reflects a paradigm shift from static market analysis to a forward-looking, innovation-sensitive framework. Nevertheless, the effectiveness of this reform will depend upon its careful calibration. If enforced with rigidity, the DVT risks deterring investment and undermining start-up exit strategies, thereby weakening the innovation ecosystem it seeks to protect. If applied too loosely, it risks becoming a hollow safeguard, allowing anti-competitive acquisitions to persist unchecked. The future of Indian merger control lies in striking the delicate balance between these competing imperatives.

To ensure the ecosystem thrives, a balanced approach is required streamlining regulatory frameworks, enhancing access to diverse funding sources, strengthening mentorship and support networks, and fostering innovation-friendly policies. With strategic resilience and adaptive governance, India's startups can continue driving innovation, job creation, and economic transformation in the coming years.

Ultimately, the legitimacy of antitrust law lies in preserving the contestability of markets. A contestable market ensures that incumbents remain disciplined by the threat of entry,

innovation continues to flourish, and consumer welfare is protected not only in the present but also in the future. The challenge before the Competition Commission of India is therefore not merely institutional or procedural, but fundamentally normative: to deploy the DVT as a measured, adaptive instrument that fortifies the architecture of democratic markets in the digital age.