



# The Indian Journal for Research in Law and Management

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## Introduction

The concept of Deal Value Threshold serves as a notification criterion and represents a recent addition to the realm of mergers and acquisitions. This paper predominantly delves into the discourse outlined in the CLRC report on Deal Value Threshold. It explores the existing thresholds, delving into the background of Deal Value Threshold in India and assessing the current scenario. The author aims to address the rationale behind the necessity of Deal Value Threshold and speculate on the potential consequences of its implementation in this paper.

Updating the combination regime within India's competition law is imperative to effectively regulate the dynamics of competition in contemporary markets. These markets not only include traditional ones that have been in existence for an extended period but also encompass emerging sectors such as digital markets. There is a growing demand to reform the regulatory framework, particularly for these modern markets. A significant proposed modification for these markets involves the adjustment of deal value thresholds to broaden the scope of transactions and combinations falling under the purview of the Competition Commission of India (CCI). Proponents of this modification assert that it would play a pivotal role in preventing anti-competitive combinations and fostering increased competition within markets.

To address this concern, the recently introduced Competition Act amendment bill of 2022 aims to revise the existing thresholds, by significantly reducing them. To maintain fair and proper competition, a new threshold termed as 'Deal Value Threshold' which is a notification criterion having a lower threshold limit, is being introduced by the amendment. Hence, it is vital for legislation to introduce regulatory measures that align with market developments, rather than lagging three steps behind.

## **Already existing thresholds**

Under the Competition Act, specific business arrangements such as mergers, acquisitions, and amalgamations must be reported to the Competition Commission of India (CCI) if they meet certain criteria, mainly based on the turnover or assets of the involved enterprises. The objective is to scrutinize significant transactions that could potentially harm competition. The Act establishes distinct thresholds for various types of enterprises, including Group Threshold (based on combined assets or turnover), Target Enterprise Threshold (based on the target's assets or turnover), and Parties' Threshold (based on the acquiring enterprise's assets or turnover). The government regularly updates these thresholds to act as barriers against deals that may negatively impact market competition.<sup>1</sup>

## **De-Minimus Exemption**

In addition to the specified thresholds, the Competition Act 2002 includes a 'De-Minimus Exemption.' Currently, this exemption applies when the value of assets or turnover of the target entity being acquired, controlled, merged, or amalgamated is below INR 350 crores for assets or INR 1,000 crores for turnover in India. The recent approval of major acquisitions in the digital sector without undergoing merger control scrutiny has prompted global antitrust regulators to reassess their regulatory frameworks. It's crucial to understand that these thresholds are designed to capture transactions with the potential to significantly reduce competition in the relevant market. By considering turnover and assets, the Act aims to identify combinations that could result in substantial market power and anti-competitive behavior.<sup>2</sup>

## **Understanding 'Deal Value Threshold'**

The term "deal value" generally represents the minimum significance or importance that a business or individual is willing to attribute to a deal, investment, or decision. It signifies the point at which an opportunity becomes noteworthy enough to be seriously considered or

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<https://www.cci.gov.in/faqs#:~:text=The%20De%2DMinimis%20Exemption%20Notification,acquirer%20is%20to%20be%20taken>

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<https://www.cci.gov.in/faqs#:~:text=The%20De%2DMinimis%20Exemption%20Notification,acquirer%20is%20to%20be%20taken>

pursued. This concept is commonly applied in various scenarios, including mergers and acquisitions, investments, partnerships, and other business negotiations.

In the context of mergers and acquisitions, for instance, a company may establish a deal value threshold, indicating the minimum financial value a potential acquisition target must meet for the company to contemplate pursuing the deal. This threshold serves as a guide, enabling companies to channel their efforts toward opportunities aligning with their strategic goals and financial criteria.

The comprehension and establishment of deal value thresholds are crucial as they assist individuals and businesses in prioritizing their resources and efforts. This practice prevents the allocation of time and resources to opportunities that do not meet strategic or financial criteria, redirecting attention toward opportunities more likely to yield meaningful value.

### **Background of Deal Value Threshold**

The trigger event for the introduction of Deal Value Threshold, the recent modification to Indian Competition Law finds its origin in the 2014 merger of WhatsApp and Facebook. The Facebook/WhatsApp merger, involving a significant acquisition of \$19 billion, serves as a notable example prompting the need for a transaction value-based notification threshold.

Despite the substantial amount involved, the merger did not meet the notification requirements based on revenue thresholds. This raised concerns among regulators, leading to a reevaluation of the existing legal framework's adequacy in preventing acquisitions that could impact emerging competition, particularly those referred to as "killer acquisitions."

This was a global concern as after the merger as there was reduced competition for facebook, user base concern and higher barriers for new entries.<sup>3</sup>

Then the CLRC report after keeping in mind all the issue related to mergers like these came to the conclusion that introduction of a new threshold can a solution for it. Hence introduction of deal value threshold was done. The Committee acknowledged the initiatives undertaken by different jurisdictions, including the EU, UK, US, and Italy, which involved comprehensive consultations to assess the challenges in merger control within digital markets. These

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<sup>3</sup> [https://ssrana.in/articles/impact-deal-value-threshold-tech-industry/#:~:text=The%20Amendment%20introduces%20a%20new,the%20transaction\)%20to%20inform%20C%20Cl.](https://ssrana.in/articles/impact-deal-value-threshold-tech-industry/#:~:text=The%20Amendment%20introduces%20a%20new,the%20transaction)%20to%20inform%20C%20Cl.)

endeavours primarily centred around the introduction of a deal value threshold, specifically for transactions influenced by data.<sup>4</sup>

## **Conclusion**

Other countries like Germany, Austria or U.S.A. have this concept and at present the results shown by the concept are progressive. Hence introduction of Deal Value Threshold could be a smart move as we can see that the present thresholds are not able to deliver the needed results. Though it being a new concept it can have certain restrictions but its outcome cannot be decided until we are able to see its working after the implementation.

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<sup>4</sup> <https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf>