

# Defining the Undefined: GMV and the Measurement Gap in India's Digital Merger Control

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In 2024, the Indian merger control regime was overhauled, introducing a deal value threshold (DVT) that mandates notification for transactions valued above INR 20 billion (approximately USD 214.42 million @ USD 1 = INR 93.27), provided the target has Substantial Business Operations in India (SBOI).<sup>2</sup> While the DVT is sector-agnostic, the SBOI nexus incorporates specific parameters with different thresholds for “digital” and “non-digital” services, one of which is the Gross Merchandise Value (GMV).<sup>3</sup> The primary driver for DVT was to ensure the Competition Commission of India (CCI) could review supposed “killer acquisitions”, i.e., acquisitions of high-value targets whose true worth is often inadequately reflected by their assets and turnover.

## I. The Case for GMV

GMV is included as an SBOI criterion because a platform's modest net revenue can mask hundreds of millions in annual

transactions (although the sales proceeds accrues to third-party sellers, not the platform). As a measure of the target's value, GMV captures competitive significance and platform scale better than revenue or turnover, a fact recognized by investors at the time of valuation and reflected in transaction documents. Thus, GMV could potentially be an effective tool for the CCI to detect potential “killer acquisitions” particularly in the context of online marketplaces.

This is perhaps the reason why the CCI's SBOI framework goes beyond counterparts in other jurisdictions, such as Austria and Germany, which use a flexible, non-codified combination of various domestic-activity indicators to determine local nexus.<sup>4</sup> Indeed, considering GMV to determine local nexus reflects a degree of regulatory foresight that accounts for domestic market realities, i.e., India's burgeoning platform economy with rapidly scaling e-commerce marketplaces.

## II. The Scope vs. Computation Gap

However, the CCI's GMV definition suffers from material gaps. GMV is defined as “cash, receivables, or other consideration either for or facilitating, sale of goods and/or the provision of services, by an

*enterprise, on its own or as an agent or otherwise.*"<sup>5</sup> While the CCI's frequently asked questions (**FAQs**) clarify the "scope" question, that this criterion applies only to enterprises facilitating third-party sales rather than direct sales; it leaves the critical "computational" questions unanswered.<sup>6</sup> The CCI does not specify the methodology for what constitutes "consideration".

Does a platform-funded discount reduce the consideration? Does a cancelled food order on Zomato (an Indian food delivery, quick commerce, dining and ticketing platform) or returning an ill-fitting pair of jeans on Myntra (an Indian fashion e-commerce platform) count toward GMV? Would the service fee or commissions typical to online platforms or Indian taxes like the goods and services tax (**GST**) form part of the consideration? The CCI definition is silent on these points, allowing for numerically different values from sales across different platforms.

### **III. Jurisdictional Incoherence: The Ratio Test**

SBOI is established for targets offering "digital" services, if their India GMV is at least 10% of the global GMV. For targets offering "non-digital services," the Indian

GMV must exceed an objective threshold of INR 5 billion (approximately USD 53.60 million @ USD 1 = INR 93.27), in addition to the 10% requirement applicable to digital services. Therefore, for a purely domestic platform, India GMV will almost always exceed the 10% threshold regardless of methodology. As such, the GMV limb applies almost exclusively to global platforms where India GMV is a sub-set of a larger global figure.

Critically, the current GMV framework does not require both sides of the ratio to be computed on the same basis. A foreign target would report global GMV under its home jurisdiction's conventions, while India GMV must be extracted by parsing through the CCI's expected methodology. If these methodologies differ, the ratio is jurisdictionally incoherent: a fraction whose numerator and denominator are not measured in the same units.

Global and domestic filings illustrate this divergence directly. Etsy, the US-listed marketplace that identifies India as one of its markets, defines Gross Merchandise Sales (**GMS**, its equivalent of GMV) as exclusive of shipping fees and net of refunds.<sup>7</sup> On the other hand, Global-e Online, an Israel-based cross-border e-

commerce enablement platform listed on NASDAQ, with operations in India, explicitly includes products, duties, taxes, and shipping within GMV.<sup>8</sup> Presumably, the global and Indian GMV for Etsy and Global-e Online would differ, as one records its GMV inclusive of shipping, while the other would exclude it.

Depending on the methodology used, this distinction could be stark. For example, Nykaa's (an Indian e-commerce platform), quarterly FY25 investor report shows a gap of approximately 43% of GMV, between its GMV and its "Net Sales Value" (**NSV**), which is net of discounts, cancellations, returns, and taxes.<sup>9</sup> Similarly, Zomato recently began reporting "Net Order Value" (**NOV**) to correct for the widening gap between the maximum retail price (the highest price retailers can charge in India and is inclusive of applicable taxes) based Gross Order Value (**GOV**), which grosses up discounts and the amounts customers actually pay. The gap between Zomato's GOV and NOV varied by approximately 18%.<sup>10</sup> Interestingly, Swiggy's (another Indian food delivery, quick commerce, dining and ticketing platform) GOV excludes cancellations at the definitional level (and includes only completed orders), while grossing up

discounts.<sup>11</sup> OYO (an Indian hospitality platform), in its 2021 IPO offer documents filed with the Securities and Exchange Board of India (**SEBI** – the Indian securities regulator) defined Gross Booking Value as net of cancellation but gross of discounts.<sup>12</sup>

Six platforms, two jurisdictions, six conventions, with no consistency on whether taxes are in or out, shipping is in or out, discounts are gross or net, and whether cancellations are excluded by definition or deducted *post-facto*. As stated above, for a cross-border transaction, this jurisdictional incoherence presents the most significant problem: the target's audited global GMV, computed under its home convention, becomes the denominator; India GMV, computed under an undefined CCI methodology, becomes the numerator. Therefore, the ratio determining the notification obligation becomes a fraction with non-equivalent parts.

In the context of "non-digital services", this issue is magnified, as parties are required to assess if their GMVs breach a static threshold of INR 5 billion (approximately USD 53.60 million @ USD 1 = INR 93.27). Therefore, depending on the computation

used, some parties may breach this threshold while others do not.

The risk this creates is not abstract. In *Avago Technologies / Broadcom Corporation*, a party argued that its Indian subsidiaries' turnover was entirely intra-group and should be excluded from turnover computation for notification assessment (as it would be under US GAAP at the consolidated group level). The CCI rejected this argument, holding that the statutory definition of turnover does not exclude intra-group revenues and that the accounting standards of the party's home jurisdiction do not govern the computation of turnover for assessing Indian notification requirements.<sup>13</sup> In *Intellect Design Arena Limited*, a party failed to notify a transaction on the basis that its "turnover in India" (which was computed using geographic segmentation of revenue under the applicable accounting standards), fell below the applicable threshold. The CCI rejected this argument, holding that turnover means the value as appearing in the books of accounts of the enterprise.<sup>14</sup> In both cases, parties faced gun-jumping penalties. These cases illustrate that threshold computation methodology is not a detail parties can

resolve at their discretion, and that getting it wrong attracts consequences.

For GMV, the computation question is at least as contested, the methodology is undefined, and no equivalent decisional practice yet exists to guide parties near the SBOI threshold.

#### IV. The SEBI Precedent

SEBI has already addressed an analogous problem. When Indian digital platforms listed in 2021 (including Zomato and Nykaa), each disclosed Key Performance Indicators (**KPIs**) in their IPO offer documents, including GMV or its equivalent, but defined and computed these metrics differently. Investors were, in effect, comparing numbers that were not comparable. SEBI responded with the Industry Standards on KPIs Disclosures (**KPI Standards**), developed by the Industry Standards Forum (**ISF**), comprising Indian industry associations, namely, Federation of Indian Chambers of Commerce & Industry (**FICCI**), Confederation of Indian Industry (**CII**), and the Associated Chambers of Commerce and Industry of India (**ASSOCHAM**).<sup>15</sup> The KPI Standards set up a hierarchy for definitions: first, Indian Accounting Standards (Ind AS); then the SEBI (Issue of Capital and Disclosure

Requirements) Regulations, 2018; then the Companies Act, 2013; and where none of these apply, definitions must align with common industry practice and widely accepted international standards.<sup>16</sup> With no explicit legal definition, GMV likely falls into the last residual category. The CCI framework, governing the same platforms for a purpose that has implications for markets and consumers, has introduced no equivalent clarity.

## V. Takeaways

Notification thresholds are jurisdictional triggers that must be addressed before entering into transactions. A threshold with an unclear computational methodology is less a threshold and more an indicative range, which is a problematic proposition when the cost of getting this wrong is not hypothetical. Ambiguity around turnover calculation for notification assessment came at the cost of penalty orders in *Avago Technologies / Broadcom Corporation* and *Intellect Design Arena Limited*, and ultimately necessitated a statutory fix: the Competition (Amendment) Act 2023 (**Amendment Act**), which now defines turnover with explicit inclusions and exclusions.<sup>17</sup> Incidentally, the Amendment Act also resolved the issue

on whether intra-group sales formed part of turnover calculation, which was in dispute till at least 2021 (*Parexel / Phoenix*<sup>18</sup>). To close the gap without legislative intervention, the CCI should issue methodology guidelines, which would need to go a step further than simple standardisation (i.e., the SEBI approach), and specify constituent elements for a clear GMV calculation. These could include, for instance:

- Whether consideration is measured at the consumer-facing price at the point of order, gross of platform-funded discounts.
- Whether cancelled and returned orders are excluded.
- Whether taxes forming part of the consumer-facing price are included unless separately itemized in audited financials.

The Amendment Act now enables the CCI to issue (non-binding) clarificatory guidelines, both proactively and upon a request.<sup>19</sup> The suggested GMV methodology guidelines will be instrumental in preventing gun-jumping penalties arising from an obvious legislative gap and align with the CCI's pragmatic enforcement record.

It is worth acknowledging that the GMV definition was likely kept intentionally broad to mitigate the risk of platforms structuring their practices (e.g., discounts or returns) to circumvent the thresholds. This is a valid regulatory concern, and the objective here is not to restrict the definition's scope. Instead, the focus is only on clearly specifying the methodology for measuring the consideration for each transaction, a technical question with a limited set of objective answers that do not necessitate regulatory discretion.

In the meanwhile, until specific guidance is issued, parties near the SBOI threshold, particularly in relation to GMV, should use

the CCI's informal pre-filing consultation mechanism to seek confirmation before signing. Alternatively, a cautious approach is recommended: *include all relevant figures* (e.g., commissions or platform fee (depending on how it is charged), discounts, taxes, and other overheads that are typically deducted while reporting turnover) when assessing the need for notification. India's move to include GMV was correctly calibrated, but the framework now requires a targeted, practical methodology note to eliminate the measurement gap.

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<sup>2</sup> Competition (Amendment) Act, No. 9 of 2023, *Gazette of India* (Apr. 11, 2023); Ministry of Corporate Affairs, Notification No. S.O. 3846(E), *Gazette of India* (Sept. 10, 2024).

<sup>3</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 4(2)(b).

<sup>4</sup> German Federal Cartel Office & Austrian Federal Competition Authority, Guidance on Transaction Value Thresholds for Mandatory Pre-merger Notification (Section 35(1a) GWB and Section 9(4) KartG) paras. 65–84 (Jan. 2022).

<sup>5</sup> Competition Commission of India (Combinations) Regulations, 2024, explanation 2(a) to reg. 4(2).

<sup>6</sup> Competition Commission of India, Frequently Asked Questions on Combinations, Q. 57, <https://cci.gov.in/combination/faqs>.

<sup>7</sup> Etsy, Inc., Quarterly Report (Form 10-Q) at 30 (Oct. 29, 2025), <https://investors.etsy.com/sec-filings/all-sec-filings/content/0001370637-25-000100/etsy-20250930.htm>.

<sup>8</sup> Global-E Online Ltd., Annual Report (Form 20-F) (2025), <https://www.sec.gov/Archives/edgar/data/1835963/000117891325001086/zk2532899.htm>.

<sup>9</sup> FSN E-Commerce Ventures Limited [Nykaa], Investor Presentation: Quarter and Full Year Ended March 31, 2025, at 1 (May 30, 2025), <https://www.nykaa.com/media/wysiwyg/uiTools/2025-5/Investor-Presentation-Q4-and-FY25.pdf>.

<sup>10</sup> Eternal Limited (formerly Zomato Limited), Shareholder Letter: Headline Results for Q4 FY2025 (Quarter Ending March 31, 2025) (May 2025), [https://b.zmtcdn.com/investor-relations/d9c290cd23764a09789769c39682276a\\_1746094084.pdf](https://b.zmtcdn.com/investor-relations/d9c290cd23764a09789769c39682276a_1746094084.pdf).

<sup>11</sup> Swiggy Limited, Letter to Shareholders: Q2 FY2025 (Quarter Ending September 30, 2024) (Dec. 2024), [https://www.swiggy.com/corporate/wp-content/uploads/2024/12/Letter-to-Shareholders\\_Q2FY25.pdf](https://www.swiggy.com/corporate/wp-content/uploads/2024/12/Letter-to-Shareholders_Q2FY25.pdf).

<sup>12</sup> Oravel Stays Limited [OYO], Draft Red Herring Prospectus (Sep. 30, 2021), [https://www.sebi.gov.in/filings/public-issues/oct-2021/oravel-stays-limited\\_53084.html](https://www.sebi.gov.in/filings/public-issues/oct-2021/oravel-stays-limited_53084.html).

<sup>13</sup> Competition Commission of India, Order under Section 43A of the Competition Act, 2002 against Avago Technologies Limited, Combination Registration No. C-2015/09/312 (June 7, 2017).

<sup>14</sup> Competition Commission of India, Order under Section 43A of the Competition Act, 2002 in Penalty Proceedings against Intellect Design Arena Limited,

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Combination Registration No. C-2015/12/348 (May 7, 2018).

<sup>15</sup> Securities and Exchange Board of India, Circular No. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2025/28, Industry Standards on Key Performance Indicators (KPIs) Disclosures in the Draft Offer Document and Offer Document (Feb. 28, 2025), [https://www.sebi.gov.in/legal/circulars/feb-2025/industry-standards-on-key-performance-indicators-kpis-disclosures-in-the-draft-offer-document-and-offer-document\\_92380.html](https://www.sebi.gov.in/legal/circulars/feb-2025/industry-standards-on-key-performance-indicators-kpis-disclosures-in-the-draft-offer-document-and-offer-document_92380.html).

<sup>16</sup> Industry Standards Forum (ASSOCHAM, CII & FICCI), Industry Standards on Key Performance Indicators (KPIs) Disclosures in the Basis for Issue Price Chapter of Offer Documents, para. 3 (Feb. 28, 2025),

[https://ficci.in/public/storage/sector/6/Add\\_docs/b5MunEoAiFLFDoedYoyOYmfyvzWJrEO8jcNyZCr.pdf](https://ficci.in/public/storage/sector/6/Add_docs/b5MunEoAiFLFDoedYoyOYmfyvzWJrEO8jcNyZCr.pdf).

<sup>17</sup> Competition (Amendment) Act, No. 9 of 2023, § 6, *The Gazette of India* (Apr. 11, 2023) (amending explanation to section 5 of the Competition Act, No. 12 of 2003).

<sup>18</sup> Competition Commission of India, Order under Section 31 of the Competition Act, 2002, Combination Registration No. C-2021/08/863 (October 25, 2021).

<sup>19</sup> Competition (Amendment) Act, No. 9 of 2023, § 45, *The Gazette of India* (Apr. 11, 2023) (introducing a new section 64B in the Competition Act, No. 12 of 2003).