

# CHAPTER - 8 - REGULATION OF COMBINATIONS.

## SYNOPSIS

### PART - I

- Introduction.
- Regulatory Framework.
- what is combination?
- Threshold.
- Kinds of combination
- combination regulation
- ANTI-competitive Agg.
- Group / turnover.
- Regulation of combi<sup>n</sup> [sec. 6]
- open offers
- Exemption - Banking sec. / oil / Gas
- control
- Factors to cause AAEC.
- Pre-filing consultation.

### PART - II

- Temp sections of C.A. 2002
  - Sec. 20
  - Sec 29
  - Sec 29A
  - Sec. 31
  - Sec 32
- CCI (combination) Reg 2024
  - Reg 5 - 13
- COMPETITION (criteria for ex.) Rules 2024
- section 5(d)

PART - I

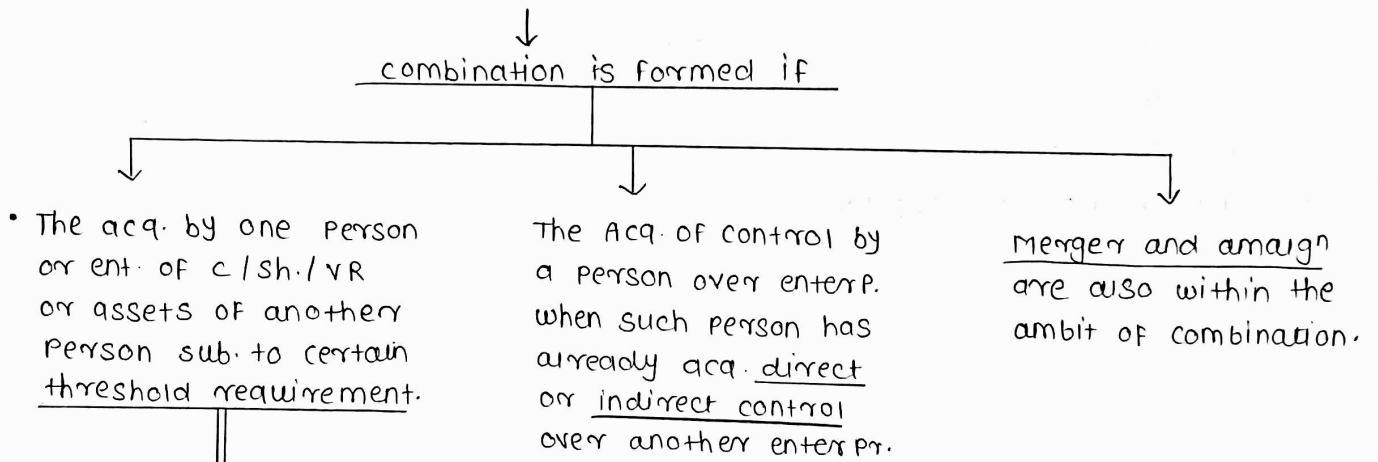
→ Introduction.

- The competition Act, 2002 was passed by both houses of parliament in 2002
- It provided for setting up of quasi judicial body i.e. CCI to prevent practices having adverse effect on competition.
- To promote, sustain competition in market.
- To ensure freedom of trade.

→ Regulatory Framework - Following Stat. Pro. apply to M/A/Acq.

- The competition Act, 2002.
- CCI (combination) Reg, 2024
- CCI (General) Reg, 2024
- NOTIFICATIONS issued by CCI FROM time to time.

→ what is combination? - [section-5]



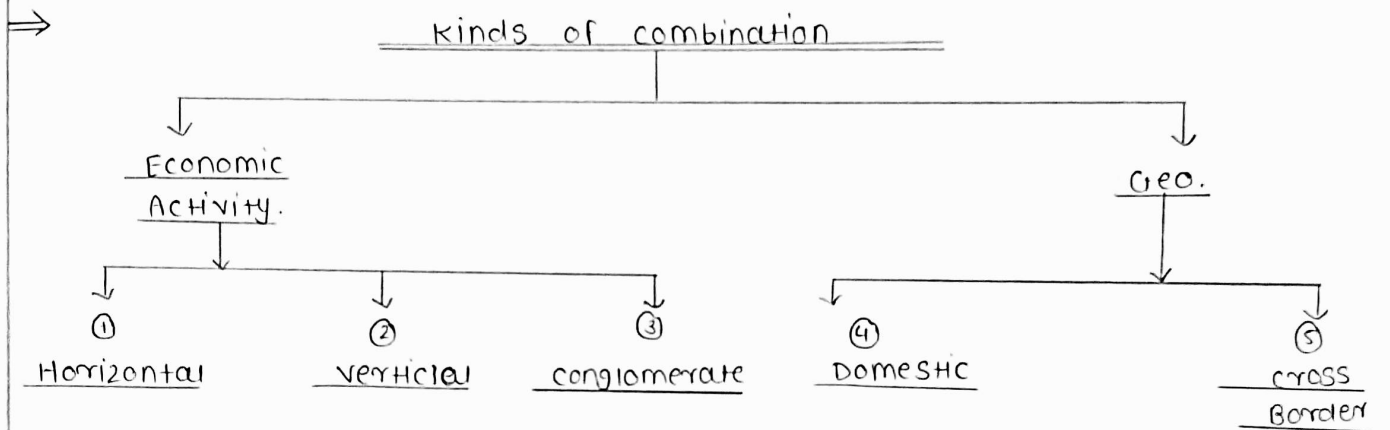
→ Thresholds.

		ASSETS		Turnover.
<u>Enterprise Level</u>	India	> RS <u>2500</u> cr.	OR	> RS <u>7500</u> cr.
	<u>worldwide with India leg.</u>	> US \$ 1.25 bn with at least <del>RS</del> 1250 (India)		> US \$ 3.75 bn with at least RS 3750 (India)
<u>Group Level</u>	India.	> RS <u>10,000</u> cr.	OR	> RS <u>30,000</u> cr.
	<u>worldwide with India leg.</u>	> US \$ 5 bn with at least RS 1250 cr in India		> US \$ 15 bn with at least RS 3750 cr in India

→ De Minimis Exemption.

- The CG has granted exemption to acquisition of small targets which is known as De minimis exemption.
- overview of threshold for availing of the de-minimis exemption.

		Assets	Turnover
<u>Target Enterprise</u>	<u>In India.</u>	<u>&lt;= 450 cr.</u>	<u>or &lt;= 1250 cr</u>



① Horizontal combinations.

→ It involve the joining together of two or more enterprises engaged in producing the same goods or rendering the same services.

② Vertical combinations.

→ It involve the joining together of two or more enterprises where one of them is an actual or potential supplier of goods or services to the other.

→ They involve enterprises operating at different level of the production chain.

③ conglomerate combinations.

→ It involve the combination of enterprises not having vertical or horizontal connection

→ These enterprises are engaged in unrelated activities.

④ Domestic combinations.

→ Involve joining of two or more ent. located in India only

⑤ cross Border combinations

→ Involve the joining together of two or more enterprises where one or more of them are operating from other countries.

## ⇒ Combination Regulation

- The basic concern is with the existence or likelihood of proposed combin<sup>n</sup> causing appreciable adverse effect on competition in the rel. market.
- The process of combination analysis undertaken by the commission is therefore broken down into -
  - delineation of the relevant market.
  - identification of overlap in the relevant market.
  - subjecting the combination to competition analysis u/s 20(4) [AAEC] of the act to ensure that there is no A.A.E.C. in the rel. market.

## ⇒ Anti-competitive Agreements - [Section-3]

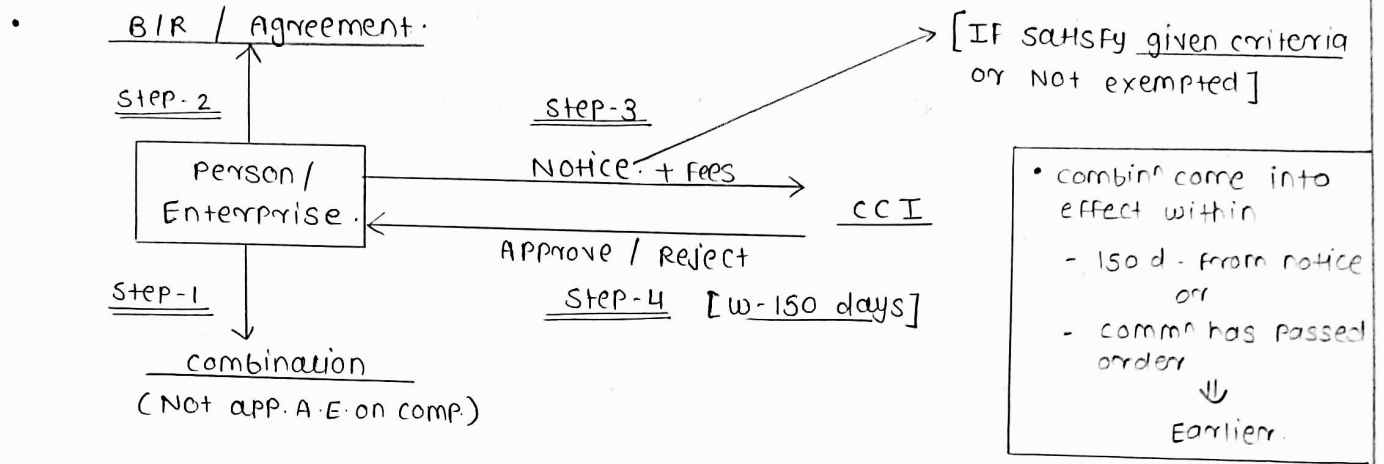
- section 3 of the Act prohibits agreement related to the production, supply, storage or control of goods or services that can cause an appreciable adverse effect on competition.
- These includes -
  - Direct or indirect determining purchase or sale prices
  - controlling production, supply, market or provision of service
  - Directly or indirectly leading to collusive bidding.
  - An enterprise or association of enterprise or a person or ass. of person though not engaged in identical or similar trade shall also be presumed to be part of anti-comp. agreement if they participate or intends to be participate in furtherance of such agreements.

## ⇒ Group / Turnover

- Group means two or more enterprises where one enterprise is dir/indir. in position to -
  - Exercise 20% or more of the voting rights in the other enterp.
  - appoint more than 50% of the mem. of BOD in the other enterp.
  - control the mgt. or affairs of the other enterprise.
- Turnover means. the turnover certified by statutory auditor on the basis of the last available audited accounts of the co. in the F.Y. imm. p.f.y in which notice is filed u/s 6(2), 6(4)
- Turnover in india shall be determined by excluding intra group sales, indirect taxes, trade discounts and all amounts generated through assets or business from customer outside india.

→ Regulation of combinations - [Section - 6]

- No person or enterprise shall enter into a combination which causes or likely to cause an appreciable adverse effect on combination. Such combination shall be void.



• Section - 6

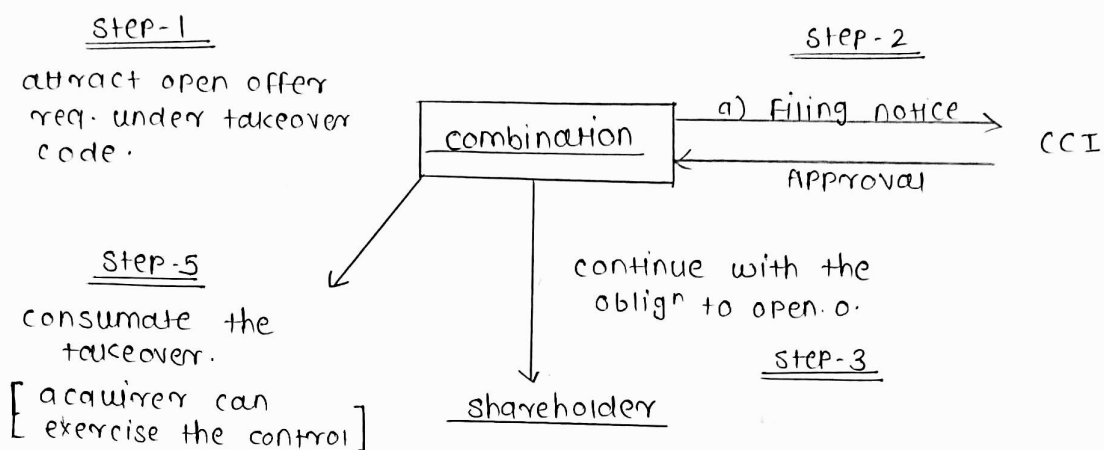
Prescribe two notices for combination.

- sec. 6(2) - Regular + Not exempted.
- sec. 6(4) - For prescribed cos + Not exempted.

- co that do not produce similar / identical product or services.
- co not engaged in any activities related to production / supply / distribution / storage of product → at diff. level / stage of production.
- which are complementary to each other.

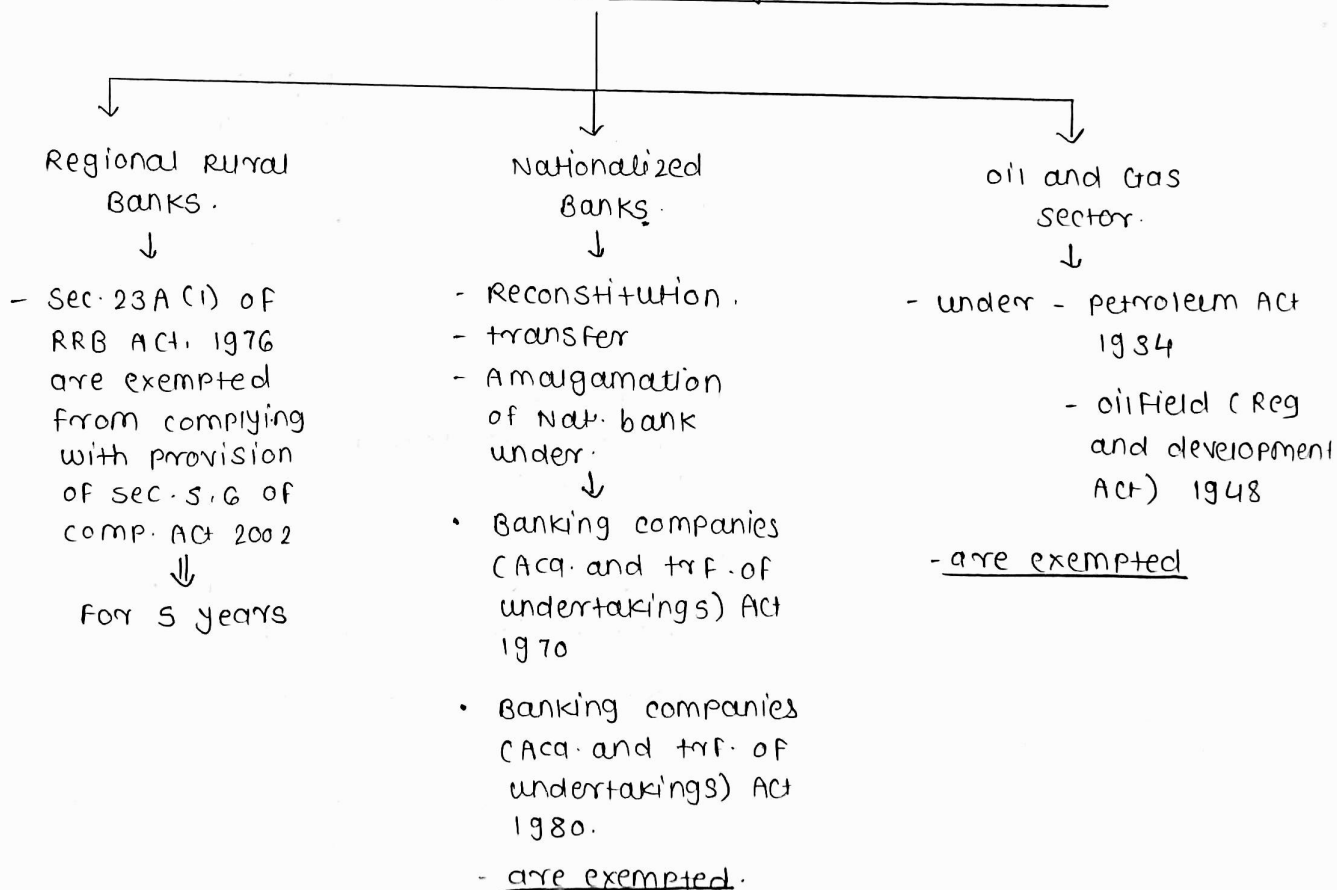
- The provision of this section shall not apply to share subscription or financing facility or any acquisition, by a public fin. institution FPI, bank or category I AIF, pursuant to any covenant of a loan agreement or investment agreement.

→ open offers - [section 6A]



→ Exemption to Banking sector and oil and Gas sector.

• with regard to the combinations relating to banking sector and oil and Gas sector the CCI has issued the following three notifications.



### ⇒ control.

- Positive control - CCI owing more than 50% of voting rights of a company  
- control over more than 50% of the BOD of a company
- Negative control - control exercised by contractually by way of AFF voting rights / veto rights over the strategic business ~~control~~ decisions of the company.

- control means the ability to exercise material influence, in any manner whatsoever, over the mgt or affairs or strategic commercial decisions by
  - one or more enterprises, either jointly or singly over another enterprise or group.
  - one or more groups, either jointly or singly over another group or enterprise.

### ⇒ Appreciable Adverse Effect on combination.

- Following factors listed under sec. 20(4) for the purposes of determining whether the combination causes or is likely to cause an AAEC in the relevant market.

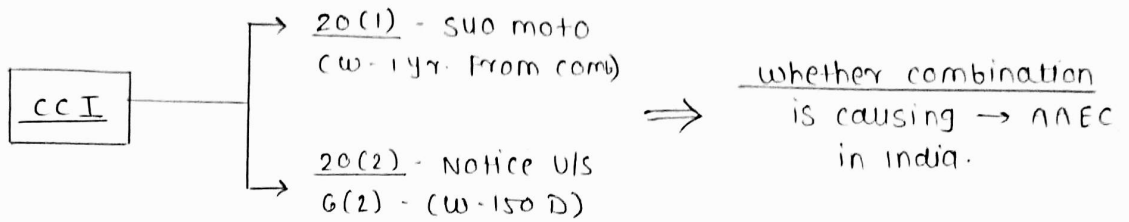
- extent of barriers to entry into the market.
- level of concentration in the market.
- degree of countervailing power in the market.
- Possibility of failing business
- Nature and extent of innovation.
- Nature and extent of vertical integration in the market.
- extent of effective competition likely to sustain in a market.
- likelihood that the combination would result in the removal of vigorous and effective competition or competitors in the market.

### ⇒ pre-filing consultation.

- Before filing a notice of combination u/s 6(2) parties may take an informal pre-filing consultation with the CCI.
- It helps in
  - clarifying filing requirement
  - identifying additional info. needed
  - Assessing likely impact on competition.
- The req. should be made at least 10 days before filing the details of proposed combination.

PART - II

→ Inquiry into combination by commission. - [Section - 20]

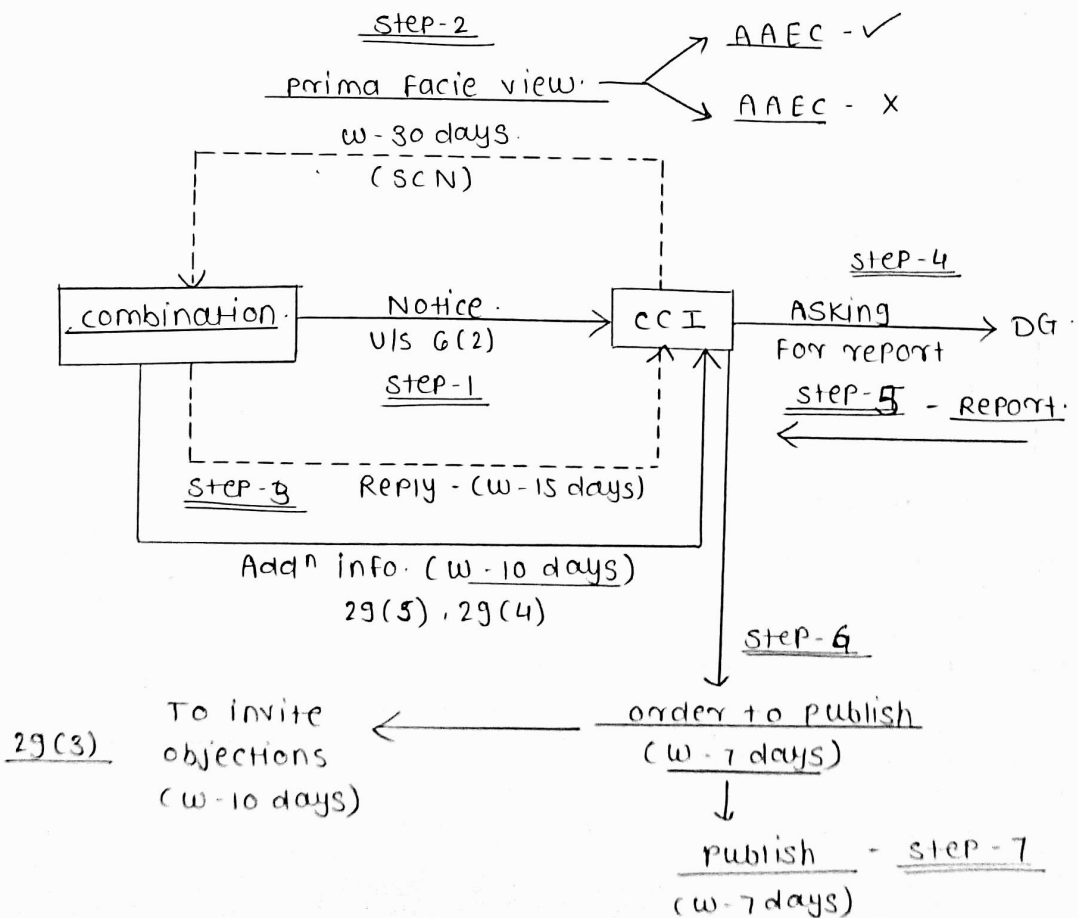


→ 20(3) - CC can prescribe the threshold.

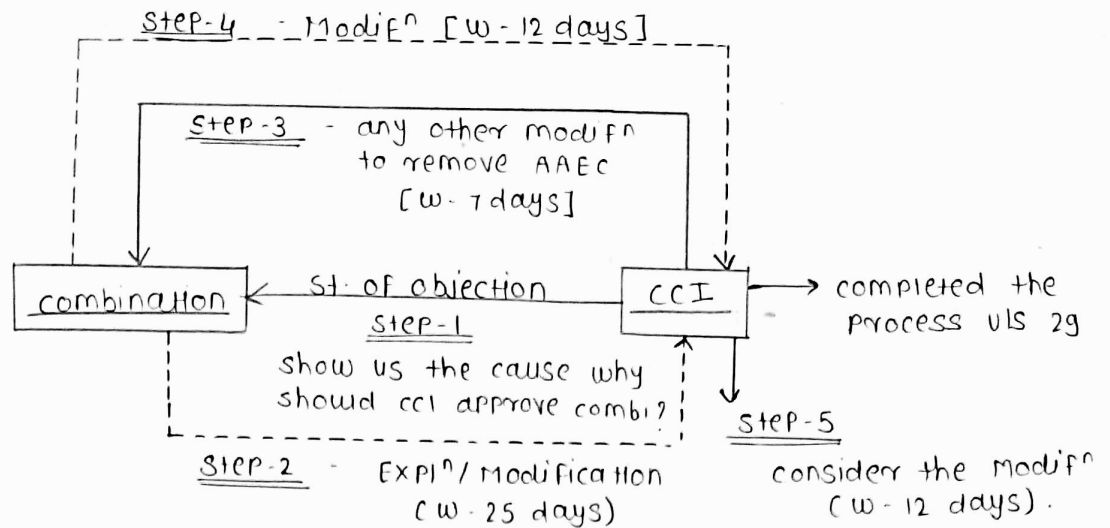
→ 20(4) - Factors to determine AAEC ... (Pr. Page).

procedure for investigation  
of combination

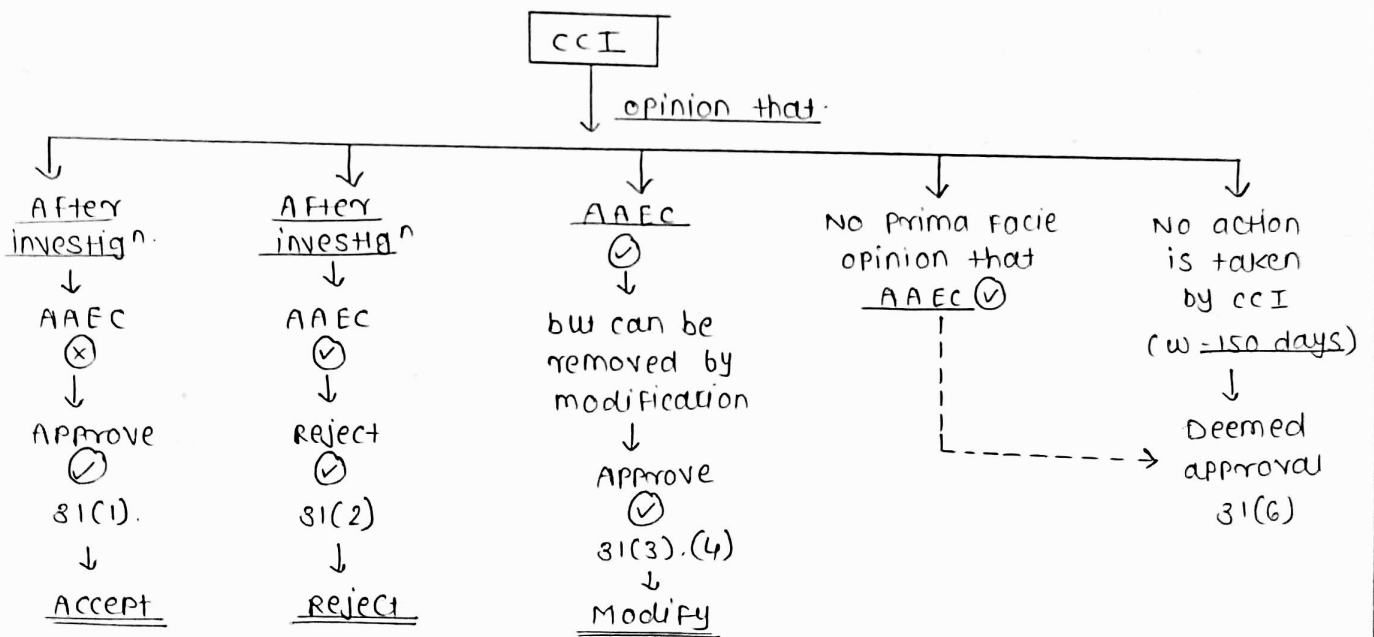
→ section - 29.



→ section - 29A - Statement of objection by cci and Proposal of modification

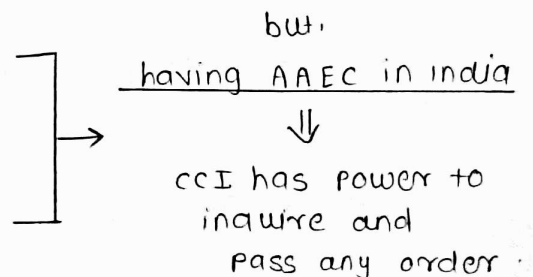


→ section - 31 - order of cci on combination.



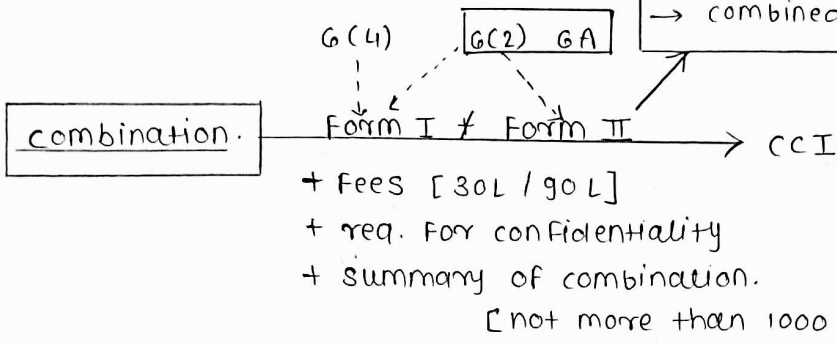
→ section - 32 Acts taking place o/s india but having an effect of comp. in india.

- Agg. entered outside india (u/s 3)
- any Party to such agg → o/s india
- Party abusing its dom. position → o/s I.
- combination taking place → o/s india
- any Party to combination → o/s india.



⇒ CCI (combinations) Reg. 2024.

- a) IF parties are eng. in prod<sup>n</sup>, supply, distrib<sup>n</sup>, sale or + trade of similar ident<sup>y</sup> or substitutable goods or services.
  - combined market sh. is > 15% in rel. market.
- b) IF parties are eng. at diff st of prod<sup>n</sup>
  - combined M.S. > 25% in rel. market.



⇒ competition (criteria for exemption of combination) Rules 2024

→ categories of combination which will be exempted from G(2), G(2A), G(4)

① Acquisition in the ordinary course of business.

- a] by underwriters [up to 25%]
- b] by stockbrokers [up to 25%]
- c] by mutual fund [up to 10%]

② Acquisition solely as an investment [up to 25%]

where acquirer does not get : 1. Rep. on BOD  
 2. comm sensitive info  
 3. Acq. / affi. → not engaged in

- ↓
- Identical
  - substitutable
  - supple complementary
  - diff. stage of prod

③ Acq. of Additional shares / VR.	- Before not more than 25%.	After not more than 25%.	(*) 1
④ Acq. of additional shares / VR	- more than 25%.	not more than 50%.	(*) 1
⑤ Acq. of sh. / VR.	- more than 50%.		(*) 1

⑥ Acq of Assets in ordinary course of business

⑦ Acq. of Assets → Not related to b'ness activity of acq.  
→ Purely as Invst.

⑧ Acq of shares → Pursuant to bonus, split, buy back, Right issue.

⑨ Acq. of Asset → within the same group. (★)

⑩ M/A → within the same group. (★)

⑪ Acq. of share / → Approved by CCI u/s 31  
control / VR.

⑫ demerger and issue of shares to demerged co or sh.h. of dem. co.

(★) → There is no change in control.

⇒ section 5(d)

• IF the value of a transaction (Acq. of control, shares, VR, Assets, M/A) exceed 2000 crore, it will be covered under this section

↓  
provided the target enterprise has substantial business op. in India

• An enterprise is considered to have substantial business op. in India if any one of the following condition is satisfied.

→ Digital services Test - Indian users are 10% or more  
of its total global users.

→ Gross Merchandise Value (GMV) Test - Indian GMV is 10% or more  
of Global GMV and  
- Indian GMV exceed ₹ 500 cr.  
[for 12 m pre. the rel. date]

→ Turnover Test - Indian turnover is 10% or more  
of global turnover and  
- Indian turnover exceeds ₹ 500 cr.