

Competition Commission issues new merger control guidelines

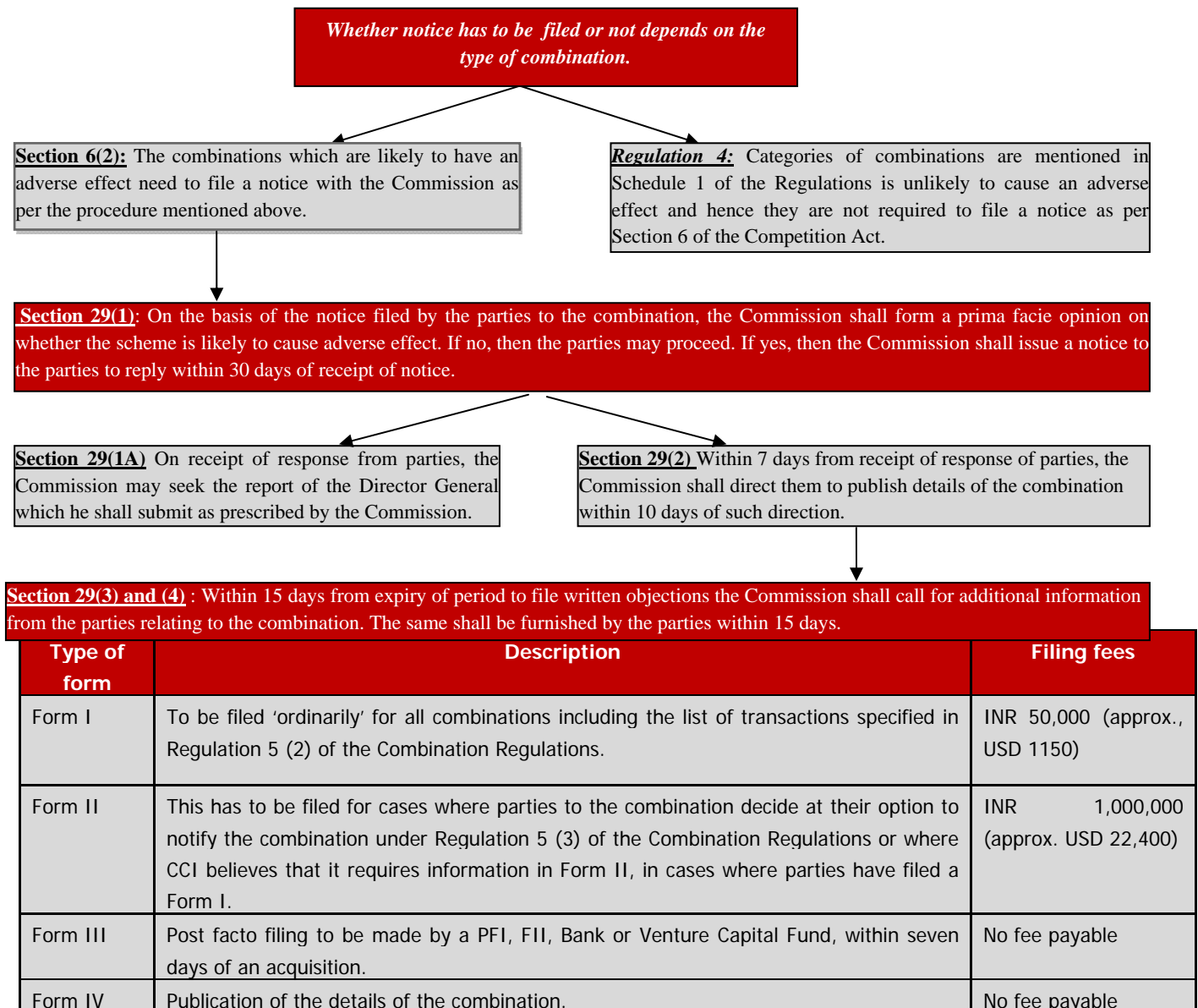
The Competition Commission of India (CCI/ Commission) has on May 11, 2011 issued the Competition Commission of India (Procedure in regard to the transaction of business relating to combination) Regulations, 2011 (Merger Control Regulations). These regulations are a marked improvement over the earlier draft version providing clarity on various issues which were a matter of concern.

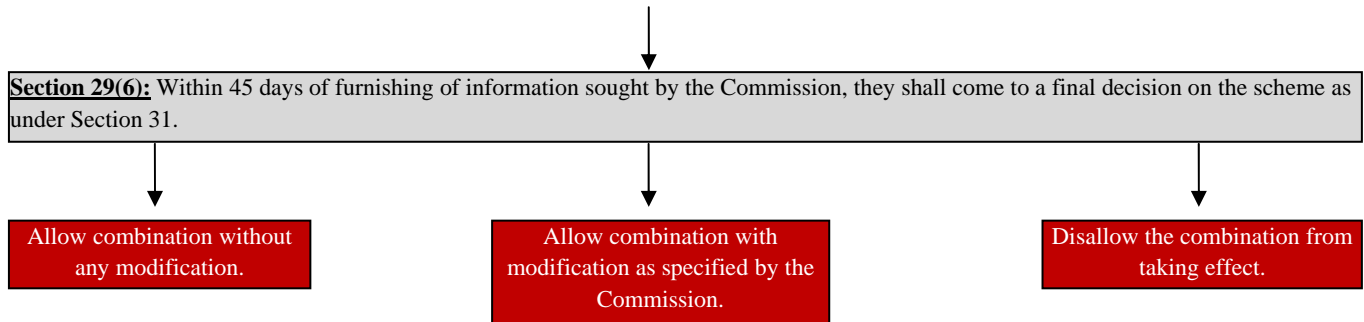
'Threshold value' for combinations: Combinations have been defined under Section 5 to include mergers, amalgamations, and/ or acquisitions if they fall within the categories of financial thresholds provided by Section 5. Section 5 lays down certain thresholds referring to the assets or turnover of the parties to a combination, if a single company (or group of companies) has assets or sales in India that exceed one of these thresholds, any combination involving that company (or group of companies) would be subject to merger notification in India, even if that combination had no material connection to India. Broadly, Section 5 defines Combination as (a) The acquisition of control, shares or voting rights or assets by a person (b) The acquisition of control of an enterprise where the acquirer already has direct or indirect control of another engaged in identical business. (c) A merger or enterprises, that cross the financial thresholds set out in Section 5. These categories are:

TYPE OF COMBINATION	FOR PARTIES IN INDIA	FOR PARTIES WORLD-WIDE	FOR THE GROUP IN INDIA	FOR THE GROUP WORLD-WIDE
Acquisition, Dominant Position, Mergers and Amalgamations	<u>Assets</u> INR 15 billion (approx USD 333 million) or <u>Turnover</u> INR 45 billion (approx USD 1 billion)	<u>Assets</u> USD 750 million or <u>Turnover</u> USD 2,250 million <u>AND</u> In India <u>Assets</u> INR 7.5 billion (USD approx 167 million) or <u>Turnover</u> INR 22.5 billion (approx USD 500 million)	<u>Assets</u> INR 60 billion (approx USD 1.3 billion) or <u>Turnover</u> INR 180 billion (approx USD 4 billion)	<u>Assets</u> USD 3 billion or <u>Turnover</u> USD 9 billion; <u>AND</u> In India <u>Assets</u> INR 7.5 billion (approx USD 167 million) or <u>Turnover</u> INR 22.5 billion (approx USD 500 million)

Change in fee to be paid on filing forms: According to Regulation 11, the Commission has reduced the merger notification fee for Form I to Rs 50,000 from Rs 40 lakh and for Form II to Rs 10 lakh from Rs 40 lakh. The details are as follows:

Procedure for filling of notice as per the Act and the new Regulations: For the transactions qualifying as “combinations” under Section 5 of the Act, a notice has to be filed with the Commission. All Parties to the combination have to file notice as per Form I or Form II of the Regulations along with additional supporting documents within 30 days of approval of the combination by the Board of Directors. But, if the parties to the acquisition are PFI, FII, Banks or Venture Capital Fund, then notice has to be filed within 7 days of acquisition as per Form III of the Regulations. The Commission is bound to pass the order on any combination for which notice is filed within 210 days on filling of notice. But, the Regulations stipulate that the Commission shall ‘endeavor’ to pass an order within 180 days of filling of notice. The timeline for merger control along with the process followed in terms of the Competition Act r/w the Merger Control Regulations has been provided below.





The transitional provision now provide that Indian merger control will apply only to transactions where binding documents are executed on or after June 1, 2011 or, in the case of mergers and amalgamations, where the boards of directors approve the proposal on or after June 1, 2011. Those transactions in the pipeline or those which have been signed but not concluded do not have to be notified.