CCI ambit to shrink after banking law

The Banking Law (Amendment) Bill 2011, which the Cabinet approved, exempts all banking Mergers and Acquisitions from the scrutiny of the Competition Commission of India (CCI).

CCI says the Cabinet approval for this exemption, if the government fails to make a corresponding notification under the Section 54 of the Competition Act 2002 ("Competition Act") as a follow-up to the exemption sought through the Banking Act amendment, goes against the spirit of the practices normally followed.

Any exemption from the provisions of the Competition Act can be done only by the central government vide a notification under Section 54 of Competition Act. Administrative departments/organs of the state cannot formulate separate laws exempting stakeholders under its supervision from the applicability of the Competition Act. This would clearly be ultra vires, unless Section 54 is first amended to permit such exemptions.

Competition Commission fines 10 explosives makers for cartelisation

The Competition Commission (CCI) of India has imposed a penalty of Rs 60 crore on 10 explosives manufacturers following a Coal India Limited (CIL) complaint that they formed a cartel.

CIL, which accounts for around 85 per cent of the coal produced in the country, needs explosives to remove the soil layer covering coal deposits in mines. The coal major had alleged that various explosives makers were collectively determining prices, threatening to stop supplies and boycotting the reverse auctions organized by it to finalize its suppliers for explosives. The CCI held that given that the named manufacturers controlled nearly 75 per cent of the explosives market in India, the boycott of the bid had resulted in foreclosure of fair and free competition.

CCI imposes Rs 317cr fine on three firms for collusive bidding

Competition Commission of India imposed a penalty of Rs 317 crore on three companies - United Phosphorus, Excel Crop Care, and Sandhya Organics, for collusive bidding to supply aluminum phosphide (ALP) tablets to Food Corporation of India (FCI). They have been fined 9 per cent of their three years' average profits. The CCI said it has found companies entering into anti-competitive agreement and that their "acting together and quoting identical prices has deprived FCI of competitive bid rates in manner of procuring ALP tablets". CCI had investigated the matter after receiving reference from FCI which alleged that such cartel among

manufacturers was leading to rise in cost of procurement.

FDI POLICY 1 of 2012- HIGHLIGHTS

The Department of Industrial Policy and Promotion ("**DIPP**") issued the fifth edition of the Consolidated Foreign Direct Investment policy - Circular 1 of 2012 ("**Policy**") applicable with effect from 10 April 2012.

Key changes introduced by the Policy are as below.

1. Non-Banking Finance Companies (NBFC) – clarification

The activity of leasing and finance covered within the ambit of 18 permissible NBFC activities is eligible for FDI under automatic route covers only 'Financial leases' and not 'Operating Leases'.

2. Import of capital goods/ machinery/ equipment

Presently, conversion to Equity capital is permitted against import of capital goods/ machinery/ equipment (including second hand machinery). To incentivize machinery embodying state-of-art technology, compliant with international standards, the Policy now provides that import of second-hand machinery would no longer be eligible for capitalisation.

3. FDI in Commodity Exchanges

The earlier FDI policy permitted upto 49 percent foreign investment in Commodity Exchange under Government Approval route. The Circular has liberalised the policy and mandated the requirement of Government approval only for FDI component of the investment, and henceforth the investments by Foreign Institutional Investors ("**FIIs**") in Commodity Exchange will no longer require Government approval. This change aligns the FDI policy in Commodity Exchanges with other infrastructure companies in the securities markets.

4. Clarification on investment by FIIs

The existing exchange control regulations permits an FII to invest in the capital of an Indian Company under the PIS with overall ceiling of 10 percent of the Capital for individual FII and aggregate ceiling of 24 percent for FII investment.

This aggregate ceiling may further be increased upto sectoral cap/ statutory ceiling, as applicable to the Indian Company by passing a Board Resolution followed by Special Resolution at its Annual General Meeting. It has now been clarified that this

would also be subject to prior intimation to Reserve Bank of India (“**RBI**”).

Press Notes/ Press Releases/ RBI Circular Incorporated

1. Prior intimation to RBI for raising aggregate FII limits for investments under the PIS

As per the erstwhile FDI Policy, an Indian company is allowed to raise the aggregate FII investment limit from 24% to the prescribed FDI sectorial caps or statutory ceiling, as applicable, with a resolution passed by its board of directors followed by a special resolution passed by the general body of the company. The RBI clarified that while raising such aggregate investment limit, the company is required to intimate the RBI and along with such intimation, submit a Certificate from the Company Secretary stating that all the relevant provisions of the Foreign Exchange Management Act, 1999 (“**FEMA**”) regulations and the FDI Policy have been complied with. To bring in line with the aforesaid RBI circular, the New FDI Policy has now incorporated the requirement of prior intimation to RBI in respect to such increase of the limit of investments by FIIs under the PIS.

2. Transfer of shares and convertible debentures of companies engaged in the financial services sector

The RBI had issued a circular dated November 4, 2011 with respect to dispensing the condition of seeking its prior approval in case of transfer of shares from resident to non-resident and vice versa in certain cases including the transfer of shares of companies engaged in the financial services. It is clarified by the DIPP that the transfer of shares of companies engaged in the financial services which is now under the general permission is reflected in the New FDI Policy. For a detailed analysis on this topic, please visit our Corpsec Hotline ‘Liberalization of Restriction on Transfer of Shares Inter se Residents and Non-Residents’.

3. Introduction of the Qualified Foreign Investor (“QFI”) Regime

The major highlight this year is opening of a completely new foreign investment route through the introduction of the QFI regime. The New FDI Policy has now included within its folds this new regime, following inter alia are the key features:

- To qualify as a QFI, the person is required to be from a country which is compliant with the Financial Action Task Force Standards and is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding. However, it is unclear as to which countries fulfill the aforesaid criteria and to clear the ambiguity, it would be advisable for the regulators to prescribe a list of such countries, the residents of which would be eligible to qualify as a QFI.

- RBI circular stipulates that SEBI registered FIIs and FVCIs would not qualify as a QFI.

- The investment by QFIs in a company is subject to an individual investment limit of 5% and an aggregate investment limit of 10%. These limits are to be reckoned over and above the FII and NRI portfolio investment limits. Investment continues to remain subject to the sectorial caps prescribed by the RBI and the DIPP.

- Investment by QFI is subject to such QFI meeting the 'know your client' ("**KYC**") requirements prescribed by SEBI.

FDI in single brand retail trading

In January 10, 2012, the DIPP had vide Press Note No. 1 (2012 Series) permitted FDI in single brand retail trading. The New FDI Policy under point 6.2.16.4 verbatim provides for the said press note.

FDI in pharmaceutical sector

The New FDI Policy provides FDI in existing pharmaceutical companies to be under government route.

FORCE INDIA FORMULA ONE TEAM LIMITED vs AEROLAB SRL AND OTHERS

A bolt out of the blue knocks off the Formula One racing team Force India. The High Court at London handed down its judgment on a longstanding intellectual property dispute, centering on allegations made by Force India against Aerolab for copyright infringement.

The long story short:
Force India, the Formula One racing team and **Aerolab**, an Italian company specialized in aerodynamics development of Formula One cars, entered into an Aerodynamic Development Agreement ("**Agreement**") in 2008 and resultantly, Aerolab was exposed to a variety of related intellectual property and confidential information held by Force India. The Agreement explicitly mentioned that all the IP rights would vest with Force India.

The Agreement was terminated in 2009 by Aerolab due to non-payment of dues by Force India. At the time of termination, Aerolab held a number of computer aided design files containing designs for Force India's parts.

Aerolab subsequently began working for **Lotus**, a Malaysian company operating Formula One Racing Team. Force India alleged that Aerolab copied the computer aided designs of Force India cars and used them in the Lotus cars.

The Claim game:

Before the UK High Court, the principal claim by Force India against Aerolab is for systematic copying of computer aided design files and misuse of confidential information relating to the design of a half-size wind tunnel model of Formula One racing car by Aerolab.

The verdict, the damages: sufficiently insufficient, is it?

It was held by the UK High Court that Aerolab's files did reproduce a substantial part of the corresponding Force India's computer aided design files for certain parts i.e. the vortex generator, rear brake duct lower element and rear view mirror. To that extent the copyright claim succeeded.

The court compared each part of the aerodynamic parts which were installed in the Force India car with their equivalents in the Lotus car and deduced that Force India's claims succeeded to a limited extent.

For both breach of confidence and copyright infringement, Force India was awarded 25,000 Euros as compensation. However, since Force India owed Aerolab 846,230 euros under the Agreement, their compensation was to be set off against this amount.

This verdict came as a major blow to Force India who had been hoping for 15 million as damages. Aerolab had earlier offered to settle at 250,000 Euros which had been turned down.

What is in the store?

Following the judgment, it appears that Force India is determined to appeal the verdict and would also refer the intellectual property rights infringement judgment to Formula One's governing body, the FIA. A separate hearing will be held to determine the covering of legal costs associated with the trial, which if allowed, could total up to nearly £4 million. The judgment analyses in fine details, the "extent of infringement". While it appears to be a methodical way to deal with the dispute, it is doubtful if the damages so awarded are sufficient enough and worth undergoing the vagaries of litigation, and primarily at the backdrop that Force India could well settle the dispute privately with Aerolab for a much higher value than the damages so awarded by the Court.

Lessons learnt in time…

Litigation is an efficacious remedy but not suitable in every case, the classic

illustration being this verdict. It is possible that Force India's fortune may substantially change in appeal but until that happens; they are forced to take this verdict with a pinch of salt.

In the more recent times, it has become indispensible for companies to ensure robust IP compliance system and exercise utmost diligence while dealing with the matters related to "confidential information". It is seen more often than not, that it's a multilayered circuitous challenge to establish breach of confidential information. It hence calls for closely monitoring access and transmitting the information and its recordal in an organized manner.

International Contribution

Document: Regulating Directors
Jersey has been at the forefront of the financial services industry for over 40 years. The commitment of the Island's government to establishing a stable political and fiscal infrastructure in which the industry can develop has added to the island's reputation as a reliable jurisdiction for investors and fund promoters.
» download document [pdf, 150 KB]

News 10 @ a glance

Fiat & Tata Motors ended distribution pact

Tatas and Fiat have decided to bid adieu to each other for distribution and servicing of Fiat vehicles. The decision was to 'further develop the Fiat brand in India' but the Fiat vehicles would continue to be made by the joint venture in which Tata Motors and Fiat have equal stake. The development of new Fiat dealerships would begin progressively and the existing 178 Fiat-franchised Tata dealers in 129 cities would be encouraged to form the foundation of the future network, both companies said in a joint announcement to the stock exchanges.

Nokia files lawsuit against HTC

Nokia filed lawsuits against HTC in the United States and Germany, claiming that the Taiwanese smart phone maker was infringing its patents. Nokia said it also filed claims against BlackBerry maker Research In Motion and ViewSonic, citing patents related to navigation, data encryption and other mobile technologies.

"Though we'd prefer to avoid litigation, Nokia had to file these actions to end the unauthorized use of our proprietary innovations and technologies, which have not been widely licensed," Nokia said in a statement on Wednesday.

China may prefer cotton from US, Bangladesh instead of India

China, the biggest importer of Indian cotton may look to buy the commodity from US and Bangladesh due to recent decision by India to first ban its exports and later reverse it.

"China is traditionally India's biggest buyer of cotton. The changeable policies impacted China's enthusiasm to purchase cotton from India. Besides, cotton from the US is a good alternative to India's supply," Chen Jing, an analyst with CITICS Futures Company said.

"The opening of exports of cotton from India will add to the already ample supplies in the cotton market and push down prices in the international market," he told state run Global Times.

The decision by Indian government to ban cotton exports last month came as a surprise as cotton yarn and fabric exports to China amounted to $ 3.1 billion last year.

India, South Africa to expand cooperation in IT, power and tourism development

India and South Africa, whose ties have acquired a "robust and dynamic" character, today decided to expand cooperation in a number of fields like power,IT, health, tourism an infrastructure development.
This was stated by President Pratibha Patil after talks with her South African counterpart Jacob Zuma, who hailed her state visit as "significant". Patil, who arrived here yesterday on a week-long visit, was given a ceremonial welcome at the historic Union building housing the office of the South African President.
Extending an invitation to Indian businessmen to invest in South Africa, Zuma said his country has launched an ambitious programme of over $ 100 billion for infrastructure development by 2014.

DLF to exit luxury brands business, to focus on premium and bridge-to-luxury brands

Less than a fortnight after ending its joint venture with Giorgio Armani, DLF said it is in the process of breaking its partnership with another Italian luxury brand

Salvatore Ferragamo as part of a move to exit luxury brands business. "Luxury is a futuristic business in India at the moment and does not have scale," DLF Brands Chief Executive Officer Dipak Agarwal says.
The real estate major will instead focus on selling premium and bridge-to-luxury fashion brands such as Boggi, Alcott, Mango, Mothercare, Claire's and DKNY. "This segment is much more profitable and scalable," Agarwal says. He says that while luxury brands have a big future in India, it will require another five to seven years to achieve scale and market size. "For us, size with speed was important," he says. The company has had only four Ferragamo and three Armani stores since it entered the luxury brands segment in 2008 as expansion of these brands in a limited market was getting difficult.

German Court Grant Motorola an injunction against Windows 7 / XBOX 360

A German court on Wednesday granted Motorola Mobility Holdings Inc.'s (MMI) request for an injunction to halt sales of Microsoft Corp. (MSFT) products, including Windows 7 and Xbox 360, over alleged patent violation, the latest twist in a case that has spanned courtrooms across the Atlantic. Microsoft said in a statement, however, that Motorola is prohibited from acting on the court's decision because a U.S. court granted

Microsoft a restraining order on April 11 to prevent Motorola from taking action based on the Mannheim regional court's ruling. The court banned the sale of Microsoft's Windows 7 operating system, Internet Explorer, Windows Media Player 12 and Xbox 360 gaming console in Germany, arguing they violate Motorola patents for video software, commonly referred to as video codec.

SEBI seeks McKinsey's help for restructuring

The stock market regulator, Securities and Exchange Board of India, has chosen McKinsey to help it ‘restructure' itself. McKinsey will make recommendations on four internal and two external areas, confirmed sources. The consultant has the mandate to study and make recommendations on four internal areas — organisational structure, HR, reprioritise areas of focus and technology.

The two external areas are sharing of regulation and oversight with self-regulatory organisations and co-operation with external agencies. SEBI had called for bids to appoint a business and strategic management consultant in mid-January.

TCS Replaced Mukesh Ambani led Reliance industry as most valuable firm of India.

Tata group firm TCS today replaced Mukesh Ambani-led Reliance

Industries as the country's most valued company in terms of market capitalisation, as investors rallied behind the shares of the IT giant. At the end of today's trade, Tata Consultancy Services (TCS) commanded a market value of Rs 2,48,116 crore -- higher than Reliance Industries' Rs 2,43,413 crore. While RIL shares fell 0.25 per cent in an overall lacklustre market, TCS shares rallied smartly by 1.83 per cent on robust buying interest among the investors.

HCL Technologies signs pact with Siemens PLM Software for the Indian market.

An arm of Siemens Industry Automation division, Siemens PLM provides Product Lifecycle Management (PLM) software and services. The partnership will help manufacturing firms in reducing time-to-market of their products. Aerospace and defence, automotive and ancillary firms would benefit more, a HCL Tech statement said.

Medical device company Becton Dickinson inaugurates its first research and development facility in Chennai, as part of its effort to expand into Asia.

Becton Dickinson inaugurated its first research and development facility in Chennai, as part of its effort to expand into Asia. This facility will be directly managed by BD Singapore, the company said, without giving details. The company

has also signed an engineering and R&D services (ERS) engagement with IT-services provider HCL Technologies Ltd. The new facility will help BD accelerate research innovations to develop new products and markets and achieve time-to-market advantage for its products, the company added. The arrangement with HCL will allow BD to focus on creating innovative solutions by using HCL's expertise in sustenance engineering and product - testing services, for instance. HCL will also conduct product life cycle and design verification studies to support new product development initiatives and product launches for BD in the emerging markets, such as India, the note added.