BTRC may face investment arbitration soon

Kawser Ahmed

WITH the serving of show-cause notices on Robi and Grameenphone as to why their licences will not be cancelled for not paying the so-called 'dues', the Bangladesh Telecommunication Regulatory Commission (BTRC) has come further closer to facing investment lawsuits. In July last year, the BTRC demanded Tk 867 crore in taxes from Robi Axiata Ltd. Earlier this year, the commission claimed Tk 12,579 crore from Grameenphone Ltd, the largest mobile phone operator in the country. Both Robi and Grameenphone have described the claims as ill-founded.

Robi is a subsidiary of Kuala Lumpur-based Axiata Group Berhad. Other significant shareholders in Robi include Bharti Airtel International (Singapore) Pte Ltd and NTT DOCOMO Inc, respectively based in Singapore and Japan.

On the other hand, Telenor Mobile Communications AS (TMC) holds the majority shares in Grameenphone. TMC, which is an indirectly wholly-owned subsidiary of Telenor ASA, is listed on the Oslo Stock Exchange and owns 55.80 percent of the entire stock of Grameenphone. Among other shareholders of the operator, Grameen Telecom holds 34.20 percent shares and the rest 10 percent shareholding includes general public and other institutions.

The BTRC's decision to serve the notices on Robi and Grameenphone did not come out of the blue. In a previous attempt to realise the dues, the commission restricted the internet bandwidth capacity of Robi and Grameenphone by 15 percent and 30 percent respectively. Later, although the BTRC restored the bandwidth capacity on the grounds of inconveniences faced by the customers, it decided to withhold all kinds of approval to Robi and Grameenphone with regard to rolling out new package or service as well as import of network equipment in a bid to compel them to pay off the dues.

In this backdrop, cancellation of licence of Robi and Grameenphone will allow their respective foreign investors to espouse investment claims at international forum. Since Bangladesh has concluded bilateral investment treaties (BIT) with Malaysia, Singapore and Japan, it will not be much problematic for the foreign shareholders in Robi to bring investment disputes before the International Centre for Settlement of Investment Disputes (ICSID) tribunal.

On the other hand, Bangladesh has not concluded any BIT with Norway. Therefore, the possibility of bringing an investment dispute by TMC or Telenor ASA will much depend on their corporate structures. Apart from Telenor Group, there are chances that other foreign shareholders in Grameenphone may avail of ICSID arbitration if Bangladesh has already concluded BIT with the country of which any such shareholder is a national.

One should take note of the fact that both Robi and Grameenphone have proposed to submit their respective disputes to arbitration under the Arbitration Act, 2001, but the which BTRC has turned down on the excuse that the Telecommunication Act, 2001 does not envisage any scope for such arbitration. However, it must be admitted that consent of the BTRC to arbitration in this regard would have been beneficial to everyone concerned. Not only would it provide an opportunity to solve the disputes domestically in time and cost-effective manner, but it would also obviate the possibility on the part of the BTRC to get entangled in international litigations.

GRAMEENPHONE	ROBI
Active users: 7.54cr (As of July '19)	**Active users:** 4.77cr (As of July '19)
Revenue (2018): Tk 13,144cr	**Revenue (2018):** Tk 6,798cr
Shareholders:	**Shareholders:**
Telenor Mobile Communications of Norway: 55.80pc	**Axiata Group of Malaysia:** 68.7pc
Grameen Telecom of Bangladesh: 34.20pc	**Bharti Airtel of India:** 25pc
General public, institutions: 10pc	**NTT Docomo of Japan:** 6.3pc

At this point, one cannot fail to notice that the BTRC's actions to realise the claimed amounts from Robi and Grameenphone are not in compliance with the Telecommunication Act, 2001. For instance, section 26 of the Act provides that the Public Demand Recovery Act, 1913 could be availed of in order to recover dues owed to the BTRC. Thus, the BTRC's strategy to recover dues by resorting to threat of cancellation of licence without having recourse to the Act of 1913 constitutes evasion of its legal obligation under the Telecommunication Act. If investment arbitration ultimately ensues, there is strong likelihood that these factors will count against the BTRC. Being a statutory body, the BTRC's actions will be squarely attributable to Bangladesh.

Settlement of financial disputes through arbitration is an accepted practice almost in every jurisdiction. If the BTRC would have agreed to arbitration with Robi and Grameenphone, it would ultimately contribute to the development of nascent arbitration culture in the country. Rather, the BTRC's injudicious action is helping transform financial disputes into investment disputes.

The writer is an advocate of the Supreme Court of Bangladesh.

Gold jumps 1pc as attacks on Saudi lift safe-haven bets

Reuters

Gold prices jumped 1pc on Monday as attacks on Saudi Arabia's oil facilities dented risk appetite, boosting demand for the safe-haven bullion, while investors awaited for clues on monetary easing from major central banks this week.

Spot gold was up 1pc at $1,503.10 per ounce as of 0739 GMT. Prices had dipped 1.2pc in the previous week on hopes that an end to the U.S.-China trade tiff could be near. US gold futures rose 0.8pc to $1,510.70 per ounce.

The attacks on Saudi oil installations have lead to a rotation of interests out of stocks and into safe-havens, said OANDA analyst Jeffrey Halley.

The risk-averse sentiment in the market underpinned the bullion, often seen as an alternative investment during times of political and financial uncertainty.

With escalating tensions in the Middle East and hopes of more stimulus measures from major central banks, the next target for gold will be $1,530, Halley added.

Yemen's Iran-backed Houthi rebel group claimed responsibility for the attack over the weekend on the world's biggest oil-processing facility.

However, a senior U.S. official said that evidence indicated Tehran was behind it, and President Donald Trump said the United States was "locked and loaded" for a potential response to the attack, souring its already strained relations with Iran. The event hurt risk sentiment in the markets, with Asian equities trading lower, and the safe-haven yen up 0.4pc against the dollar.

Investors also await the outcome of the US Federal Reserve and Bank of Japan's policy meetings on Wednesday, for signals on their future policy path.

"(The Saudi attacks) are supportive for gold, but prices are still under pressure as investors are awaiting the Fed's announcement," said Hareesh V, head of commodity research at Geojit Financial Services, adding that $1,465 was the current support level for gold.

Central banks globally are facing increasing pressure to dole out monetary support for flagging economies as the U.S.-China trade dispute hurt trade and business sentiment. Lower interest rates reduce the opportunity cost of holding non-yielding bullion and weigh on the dollar.

Dismal Chinese data indicating that industrial production had grown at its weakest pace in 17-1/2 years also weighed on market sentiment.

China's economy strains under disappointing data

AFP, Beijing

CHINA'S economy showed more signs of strain Monday as the country published weak data for industrial output, investment and retail sales, amid a lingering trade war with the United States.

Industrial output grew by 4.4 percent year-on-year throughout August, falling to its lowest level in 17 years and down from 4.8 percent in July. The figure was well below analyst expectations, with a Bloomberg survey of analysts predicting heartier growth of 5.2 percent.

"We must be aware that international instabilities and uncertainties are increasing significantly, and that at home economic structural issues are still prominent and the downward pressures on (the) economy are mounting," said Fu Linghui, a spokesman for the National Bureau of Statistics, which released the data. Retail sales also slipped to post growth of 7.5 percent -- 0.1 percent down on the previous month and a knock to Beijing's aims to boost domestic consumption.

Investment in fixed assets saw year-on-year growth of 5.5 percent in the first eight months of the year, 0.2 percent less than the first seven months, including a slight dip in crucial real estate investment.

All three sets of data fell short of analyst expectations, with Bloomberg predicting 7.9 percent growth in retail sales and 5.7 percent growth in investments.

China's gross domestic product (GDP) growth slowed to 6.2 percent in the second quarter of the year -- the weakest pace in almost three decades.

REUTERS/FILE

A worker welds a bicycle steel rim at a factory manufacturing sports equipment in Hangzhou, China.

"For China to maintain growth of 6.0 percent or more is very difficult against the current backdrop of a complicated international situation and a relatively high base, and this rate is at the forefront of the world's leading economies," Chinese Premier Li Keqiang was quoted as saying in an interview with Russian media which was published on the Chinese government's website.

The People's Bank of China said earlier this month that it would cut the amount of cash lenders must keep in reserve, in a bid to release more money into the stuttering economy. "With a strong rebound unlikely any time soon, we anticipate that policymakers will ease monetary conditions further in the coming months," said Martin Lynge Rasmussen, China Economist at Capital Economics.

Oil prices rocket on slashed Saudi output

AFP, London

BRENT crude surged by 20 percent Monday -- the biggest gain since the 1991 Gulf War -- after weekend drone attacks on two Saudi oil facilities halved output in the world's top crude exporter, fuelling fresh geopolitical and growth fears.

WTI oil meanwhile soared 15 percent, also after President Donald Trump warned that the US was "locked and loaded" to respond to the attacks that Washington blamed on Iran. Both key oil contracts pared gains but were still up by more than eight percent around 1030 GMT.

The price surges weighed across world stock markets on fears that a sustained higher cost of crude could further impact weak global economic growth. But share prices of energy majors jumped, with traders seeing higher profits down the line for the likes of BP and Shell, whose stock won between 3-4 percent Monday.

In foreign exchange, the dollar was down against the euro and yen, while the pound slid as Prime Minister Boris Johnson was holding Brexit deal talks with EU chief Jean-Claude Juncker.

Gold, which along with the yen is seen as a haven in times of geopolitical and economic unrest, won one percent to $1,503.70 an ounce. Markets' focus was firmly on oil however after the weekend attack that was claimed by Tehran-backed Huthi rebels in neighbouring Yemen, where a Saudi-led coalition is bogged down in a five-year war.

"Oil price shocks like this are bad news for growth," Neil Wilson, chief market analyst at trading group Markets.com, told AFP.

"It raises stagflation risks too -- higher oil prices suppress growth and raise inflation. Of course it depends how long this lasts, does the risk-premium mean higher prices for the rest of the year or does it fade quickly if it comes back on stream this week?" Saudi Arabia was on Monday expected to restore at least a third of the production lost to the attacks, according to experts and reports.

The Saturday strikes on national energy giant Aramco's Abqaiq processing plant and Khurais oil field knocked 5.7 million barrels per day off production, more than half of the Opec kingpin's output.

REUTERS/FILE

Smoke is seen following a fire at Aramco facility in the eastern city of Abqaiq, Saudi Arabia on September 14.

General Motors auto workers strike in US

AFP, Detroit

THE United Auto Workers union began a nationwide strike against General Motors on Monday, with some 46,000 members walking off the job after contract talks hit an impasse.

The move to strike, which the Wall Street Journal described as the first major stoppage at GM in more than a decade, came after the manufacturer's four-year contract with workers expired without an agreement on a replacement.

Local union leaders met in Detroit "and opted to strike at midnight on Sunday," the UAW said on its Twitter account.

"This is our last resort," Terry Dittes, the union's lead negotiator with GM, told a news conference after the meeting.

"We are standing up for the fundamental rights of working people in this country." UAW officials said the two sides remained far apart in the contract negotiations, with disagreements on wages, health care benefits, the status of temporary workers and job security.

"Our members have spoken; we have taken action; and this is a decision we did not make lightly," Ted Krumm, chair of the UAW's national bargaining committee, said in a statement. "We are standing up for what is right," Krumm said.

Hours before the strike began, US President Donald Trump tweeted: "Here we go again with General Motors and the United Auto Workers. Get together and make a deal!" GM's last major strike, according to the Journal, was in 2007 when 73,000 workers at more than 89 facilities walked off the job for two days.

In a statement, GM said it was "disappointing" that the UAW's leadership had decided to call the strike, saying it had presented a "strong offer" in contract negotiations. "We have negotiated in good faith and with a sense of urgency. Our goal remains to build a strong future for our employees and our business," it said.

UAW's leadership had previously won overwhelming approval from its rank-and-file for a strike if it became necessary.

Workers at Ford and Fiat Chrysler agreed to extend their contracts, but GM management was informed Saturday that the union would not extend its contract.

Earlier on Sunday, contract maintenance workers walked off the job at GM plants in Michigan and Ohio in a parallel dispute with contractor Aramark.

GM has enjoyed several years of strong sales, posting $11.8 billion in operating profits last year, prompting union officials to argue it is time to share the wealth with workers who have borne the brunt of downturns.

But the outlook for GM is less clear, with concerns growing that a recession may be in the offing amid protracted trade tensions.

GM announced last November it was effectively shuttering five plants in North America, including facilities in Michigan and Ohio that were "unallocated" for production. Protecting jobs and saving those plants have been key issues in the negotiations.

In its response to the strike, GM's management revealed that its offer included a promise of $7 billion in investments that would save or protect 5,400 union jobs and address the issue of the two "unallocated" plants.

It also promised that a new all-electric truck would be built in a US plant. Adding to the friction is a federal corruption probe of the union leadership, which resulted in an FBI search last month of the home of UAW President Gary Jones.

A member of the UAW's executive board, Vance Pearson, was arrested on Thursday on charges of conspiracy to use union dues for lavish personal expenses.

Pearson, a UAW director in St. Louis, Missouri, was accused of using union conferences as a cover to justify long-term stays at luxury resorts in California.

AFP

Members of the United Auto Workers, who are employed at the General Motors' Flint Assembly plant in Michigan, cheer as workers drive out of the plant during a strike yesterday.

Pakistan hopes to meet fiscal deficit target set by IMF: finance chief

Reuters, Islamabad

PAKISTAN is edging towards macro-economic stability after putting in place tough measures to meet a fiscal deficit target set by the International Monetary Fund as part of a $6 billion bailout in July, its finance chief said on Sunday.

An IMF team is due to arrive in Islamabad on Monday to review progress on the reforms agreed as part of that package, including a cut in the fiscal deficit to 0.6 percent of gross domestic product from a record 8.9 percent in the year to June.

Abdul Hafeez Shaikh, the finance chief, said in a news conference that Pakistan was working hard to expand its tax collection base, cut expenditure, and boost non-tax revenues, and was gradually heading towards economic stability.

"We have to increase economic activity in the country and have to maintain a basic macro-economic stability," he said. "We are seeing one trillion ($6.44 billion) extra in non-tax revenues."

Shaikh said Pakistan had cut its current account deficit by 73 percent from last year's level, and added nearly 600,000 new tax filers in recent months.

The country has been struggling to avert a balance of payments crisis and to prevent its debt from spiralling out of control.

The budget deficit, at 8.9 percent of GDP - well above an estimate of 7.1 percent given by Prime Minister Imran Khan's government in June, and 6.6 percent seen in the year ending June 2018 - underlines the severe economic crisis facing the country.

Pakistan has a notoriously narrow tax base, with fewer than 1 percent of its 208 million people filing income tax returns. There is a vast informal economy and several key sectors of the official economy are largely exempt from tax.

REUTERS/FILE

A trader counts Pakistani rupee notes at a currency exchange booth in Peshawar, Pakistan.