Power tariff hike in H2 still likely

> Affin Hwang Capital says TNB likely to record lower 'over-recovery' revenue under the imbalance cost pass through mechanism in Q2

PETALING JAYA: A power tariff hike in the second half (H2) of the year is still a possibility as Tenaga Nasional Bhd (TNB) is likely to record an under-recovery in coming quarters, said Affin Hwang Capital.

TNB started to record lower "over-recovery" revenue under the imbalance cost pass through (ICPT) mechanism in the second quarter (Q2) at RM191 million relative to RM605 million in the first quarter (1Q), due to the increase in coal price.

"As management expects coal prices to rise above US$80/mt, we believe that it is likely that TNB will record an under-recovery in coming quarters, and this could lead to a higher tariff in H2 which is in line with the ICPT mechanism," it said in its report last Friday.

"The price hike could be a stock re-rating catalyst, as there have been concerns that the government might not follow through with the ICPT as the election cycle approaches."

It said overall cost was a surprise on the upside, as TNB continues to record higher provisioning on its receivables, which is likely to continue as management has taken what it views as "prudent" approach on all its receivables.

It noted that the higher finance costs are driven by both the issuance of the US dollar sukuk in Q2 and the reclassification of some finance costs related to the construction of its plant which were previously capitalised.

According to Affin Hwang Capital, TNB indicated it had submitted its suggestions on the return on the regulated asset base last month and was in the process of negotiating with the government on the outcome.

"Our base-case scenario is that the government would allow TNB to maintain the return at 7.5%; assuming a worst-case scenario of 7%, we believe the impact to earnings would be capped at around 5%," it said.

It maintained a "buy" rating TNB with a 12-month target price of RM16.50. It believes that under the ICPT mechanism, the increase in fuel costs will be earnings neutral to TNB, hence company fundamentals remain unchanged.

Meanwhile, MIDF Research said demand growth could taper off into H2 off a stronger base last year, although overall demand growth was resilient for Q2 as well as H1.

"Industrial demand finally showed positive growth (1.3% year-on-year) in Q2 while the commercial segment was also up by 1.3%. We conservatively stick to our forecast demand growth of 2% versus actual year-to-date growth of 2.3% for the time being but note that TNB should ultimately benefit from higher production and trade numbers," it said in its report.

It said TNB's Q1 results came within estimates and would have been stronger if not for higher coal prices. Core earnings in Q1 were up 6% year-on-year on the back of a 6.4% year-on-year increase in revenue, driven by a 1% demand growth and a marginal increase in average rates achieved of 39.4 sen/kWh.

It said that fuel cost was higher, in particular coal at US$70/mt CIF which was up 22% year-on-year. Coal contribution in the mix dropped to 50% in Q2 from 54% in Q1 due to coal plant outages but was buffered by lower LNG price and lower gas consumption.

MIDF Research re-affirmed its "buy" call at an unchanged target price of RM16.80 with capital management, overseas expansion and the resolution to its RM2 billion tax issue with the Inland Revenue Board being key catalysts over the next 12 months.

"TNB is a liquid proxy to the gross domestic product growth outperformance and stronger trade, but share price has yet to move meaningfully relative to the broader market. At just 11.6 times FY18F PE TNB trades at a discount to sector average of 13 times and the index's 16-17 times," it said.

LEGALLY SPEAKING

Landmark ruling on compensation in compulsory land acquisition

IN Malaysia, right to property is not absolute, as it is subject to the statutory power of the state authority to acquire land compulsorily from land owners under the Land Acquisition Act 1960 (the Act). Therefore, it is paramount and crucial that land owners whose lands have been compulsorily acquired are entitled to adequate compensation under the constitutional safeguard of Article 13 of the Federal Constitution.

A recent Federal Court decision in two cases of Semenyih Jaya Sdn Bhd; Amitabha Guha and Parul Rani Paul vs Pentadbir Tanah Daerah Hulu Langat (which were heard together) examined and entrenched this constitutional safeguard of adequate compensation – this landmark decision of our apex court can be summed up in the following manner:

(a) Section 40D of the Act effectively imposes on a High Court judge (when reviewing the land administrator's award of compensation on an appeal) a duty to rubber-stamp the decision / opinion of the two assessors (who are qualified valuers sitting in open court with the judge) on the amount of compensation for the land acquired, thereby taking away the judicial power from the High Court judge. Hence, the Federal Court declared Section 40D of the Act to be unconstitutional and invalid as being ultra vires the Federal Constitution – the Federal Court struck down Section 40D of the Act – such a declaration will only bind pending cases at first instance or at the appellate stage – all proceedings involving compensation in land acquisition matters which had taken place and been determined under Section 40D of the Act prior to the date of this judgment of the Federal Court (i.e. April 20 2017) will remain status quo. The Federal Court urged that a new Section 40D of the Act would have to be put in place (by Parliament) which should make clear that essentially it is for the judge and the judge alone to decide on the amount of compensation for the land acquired, and that the opinion of the assessors are not binding on the judge.

(b)The proviso to Section 49(1) of the Act seeks to bar all appeals from the High Court to the Court of Appeal and to the Federal Court on the issue of compensation. The Federal Court held that the proviso to Section 49(1) of the Act must be strictly interpreted in favour of the land owners whose lands have been compulsorily acquired, so as to give meaning to the constitutional protection of a person's right to his property – hence, the Federal Court held that the proviso to Section 49(1) of the Act does not represent a complete bar on all appeals to the Court of Appeal from the High Court on all questions of compensation – instead, the bar to appeal in the proviso to Section 49(1) of the Act is limited to issues of fact on ground of quantum of compensation – therefore, an aggrieved party has the right to appeal against the decision of the High Court on questions of law.

(c) Section 40C of the Act provides that the opinion of the two assessors shall be given in writing and recorded by the judge. The Federal Court held that compliance with Section 40C of the Act is mandatory – non-compliance with Section 40C of the Act violates land owners' constitutional right to a fair and reasonable compensation arising from compulsory acquisition – a decision of the High Court made in contravention of Section 40C of the Act is invalid and ought to be set aside.

(d) The Federal Court further held that the bar to appeal in the proviso to Section 49(1) of the Act does not operate when there is non-compliance with Section 40C of the Act.

(e) The Federal Court held that based on the principle of equivalence, compensation for loss of business (caused by the loss of the land acquired) is allowed under the Act – hence, in determining market value of the land acquired, the Land Administrator and the High Court (on an appeal against the land administrator's award of compensation) must give consideration to the profit value of the land at the time of acquisition.

Certainly, this landmark decision of our apex court is a momentous instance of judicial activism which has breathed new life into our constitutional rights to property under the Federal Constitution.

Contributed by Heng Yee Keat of Christopher & Lee Ong (www.christopherleeong.com).

Australia dismisses Cable & Wireless appeal for tax refund

SYDNEY: The remnants of one of Britain's oldest communications firms, Cable & Wireless, yesterday lost an appeal in Australia for a US$339 million (RM1.47 billion) tax refund over the 2001 sale of The Australian Tax Office (ATO) has increased scrutiny over how much tax multinational companies operating in Australia pay.

In December, it said it was pursuing seven global businesses for over A$2 billion in unpaid tax.

Cable & Wireless Australia, whose British parent was split up in 2010, took the ATO to the Federal Court in 2015 claiming it should have only paid A$134.5 million in tax, and seeking a $452.45 million refund plus legal costs.

Under a deal that enabled Singtel to acquire Optus – since renamed Singtel Optus Pty Ltd – Cable & Wireless sold its 82% stake in Optus for $A6.2 billion, paying A$586.9 million in tax.

Almost A$4 billion of the funds received from Singtel was treated as a dividend payment that was taxed at 15%.

Cable & Wireless argued the transaction should have been treated as a capital gain because of the way the deal was structured.

Australia's Full Federal Court dismissed Cable & Wireless' claim, saying the company was unable to satisfy the court that it was entitled to request a refund.

Cable & Wireless was formed more than 140 years ago, initially establishing a telegraph cable service between London and Dublin. It split in 2010, with its international division demerging to form Cable & Wireless Communications. The remainder became Cable & Wireless Worldwide and was acquired by Vodafone Group in 2012. – Reuters

S Korea's April export growth surges to near six-year high

SEOUL: South Korean exports rose at a much faster-than-expected pace in April, surging for a sixth straight month helped by robust demand for high-tech memory chips and adding confirmation to perceptions of broad recovery in the global economy.

Exports to the United States rose in April but South Korea's trade surplus with that country declined on an annual basis over the same period, yesterday's data showed, potentially easing concerns Washington may impose protectionist measures that could hurt South Korea's economy – Asia's fourth largest.

US President Donald Trump said last week in an interview with Reuters that he was seeking to change a free trade deal with South Korea or scrap it entirely.

Preliminary data showed April's exports soared 24.2% from a year earlier to US$51.01 billion (RM221.9 billion), while imports surged 16.6% to US$37.75 billion to create a US$13.25 billion trade surplus, the Ministry of Trade, Industry and Energy said.

Exports rose at the fastest pace since August 2011 when they gained 25.5%.

Shipments to the US rose 3.9% on-year in April, rebounding from a 5.0% fall in March, the official breakdown showed. South Korea's trade surplus with the US was US$1.68 billion in April, down from US$2.52 billion a year before.

Machinery, oil products and household electronics were the main drivers of exports to the US last month.

"If this trend continues, South Korea will have likely escaped one of the criteria for currency manipulator designation," said An Ki-tae, an economist at NH Investment & Securities, adding the trade surplus with the US was likely to fall below US$20 billion this year if it kept declining at the current tempo.

"The controversy over trade with the United States will probably fade at this rate," he said.

South Korea is currently in the process of reducing its trade surplus with the US, Finance Minister Yoo Il-ho said on Sunday.

Meanwhile, exports to China rose 10.2% on-year in April versus a 12.1% gain in March. Last month's gain was thanks to the booming construction sector and capital expenditure in China, the data showed. – Reuters

AirAsia load factor up 3% in first quarter

PETALING JAYA: AirAsia Bhd registered a 3% growth in load factor to 89% for the first quarter of 2017.

The low-cost carrier said in a statement yesterday that the total number of passengers carried increased 13% year-on-year (yoy) to 15.23 million, well ahead of the 9% increase in seat capacity.

At the end of the quarter under review, the group's total fleet size stood at 176 aircraft.

Malaysia AirAsia achieved a load factor of 90% in Q1, up 5% yoy. Demand exceeded the 1% yoy increase in capacity, with the number of passengers carried rising by 6% yoy to 6.85 million.

Its Thai, Indonesian, Philippine and Indian units reported load factors of 89%, 82%, 92% and 89%, respectively.