

Celcom's past haunts Telekom

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Three years after taking over Celcom (Malaysia) Bhd, the ghosts of its past owners continue to haunt Telekom Malaysia Bhd (TM).

Last week, Celcom was found liable by an arbitration panel in Switzerland for infringing an agreement signed with Deutsche

Telekom AG's unit, DeTeAsia in 2002.

The tribunal ruled that Celcom was liable to pay DeTeAsia US\$177.2 million in principal plus US\$16.2 million in interest as well as other legal and arbitration costs. This works out to a tidy sum of about RM740 million.

TM, which owns 100% of Celcom since wresting control of the mobile operator from Tan Sri Tajudin Ramli in 2002, maintains that it is

seeking legal advice on the options available.

But an arbitrator says it is unlikely that TM has many options other than having to pay Deutsche Telekom. "The tribunal seems to have been properly constituted with distinguished members and TM was represented. There does not seem to be any procedural mishap, which is the key ground for any appeal," he says.

However, there is nothing to stop TM from trying to agree on a settlement figure with Deutsche Telekom. It is not uncommon for parties to agree on a lesser sum of payment after an arbitration award, as enforcement of awards could take years.

"TM's reputation is at stake, especially in the eyes of foreign companies. If TM does not honour this award, it will send out the wrong message to current and potential business partners and investors," opines an analyst.

But first how did TM end up with this problem? The case is widely referred to as the poison pill that was left behind by Celcom's previous owner Tajudin. In April 2002, Celcom, under Tajudin's control, entered into a buy-out agreement with Deutsche Telekom, which owned about 8% of Celcom then. This agreement contained a clause specifying a minimum of RM7 per Celcom share to be paid to Deutsche Telekom by any new acquirer. It is understood that Tajudin used this "poison pill" to try to stave off a take-over attack.

However, Tajudin began to lose control of Celcom when he defaulted on a loan obligation with Pengurusan Danaharta Nasional, which then sold those Celcom shares which had belonged to Tajudin, to TM.

TM subsequently made a mandatory general offer (MGO) for Celcom shares at a price of RM2.75 per share and ended up with all of Celcom's shares.

Deutsche Telekom sold its Celcom shares to TM at that price, but it had filed to claim another RM4.25 a share in damages, as per the agreement with Celcom. It is this amount plus interest and other charges that TM now has to pay Deutsche Telekom.

It is understood that at the time of the MGO, TM was advised by lawyers that Deutsche Telekom could not exercise those rights insisting on the RM7 per share payment for two reasons. First, that such rights could only be granted by shareholders in an EGM and that the granting of such rights be allowed by the company's memorandum and articles of association.

Finding the culprits

Market observers say this case highlights the bad management of Celcom under its previous owners and should spur TM to be more vigilant in its pursuit of Celcom's previous management for its wrongdoings.

One observer says that TM should consider initiating action against Celcom's previous management for the problems relating to the "poison pill" case. "Did the previous directors breach their fiduciary duties by inking the contract with Deutsche Telekom?"

As TM's lawyers had pointed out, Celcom should not have granted those rights to Deutsche Telekom without calling for shareholders' approval at an EGM and without such powers being granted in the company's memorandum and articles of association.

These are the questions that TM's lawyers should be looking at now, instead of trying to find out if they can appeal the arbitration tribunal's decision. They should be looking to claim the RM700 million from the previous management (of Celcom)," says the observer.

In any event, even if TM pays out the more than RM700 million, it would not have a major impact on the incumbent's books.

But this case does not do justice to TM, which, aside from probably being ill-advised by its lawyers, has done nothing to deserve being slapped with the RM740 million bill. TM's best and perhaps only recourse is to use this incident to intensify its efforts at recovering monies from Celcom's previous owners for their misdeed. Only then will TM be able to fully exorcise itself from the haunting of Celcom's tumultuous past. //