



Industry Insights Issue 2

Oil & Gas Arbitration

January 2022



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Foreword

This report is part of a series of industry-focused arbitration reports edited by [Jus Mundi](#).

To explore the oil & gas industry, we drilled deeply into Jus Mundi's arbitration data as of December 2021. Because of confidentiality in arbitration, we cannot be exhaustive to have every oil & gas arbitration case document. Still, we are proud to have the most comprehensive database in international arbitration. Jus Mundi has accumulated a significant number of cases concerning the oil & gas sector. We have achieved this by collecting data using artificial intelligence through local public resources, open sources, exclusive partnerships with major institutions like [ICC](#), [VIAC](#), [RAC](#), and collaborative partnerships like with the [IBA](#), which receives arbitral awards from various contributors globally.

Jus Mundi's [mission](#) is to make arbitration data available to all. Therefore, anyone can access any document on our database for free.

This report will provide you with a unique overview of arbitral institutions, the key actors involved, and exclusive statistics. Additionally, we have included a recent case analysis drafted by respected lawyers and a short article written by seasoned experts. Finally, we added a list of the latest oil & gas arbitration cases filed from January 2021 until December 2021. Thanks to Jus Mundi's open access, you can look into all this data for free.

We hope you will enjoy this report. You may also download our previous issue on [construction arbitration](#).



Introduction

The energy sector continues to come to terms with the new normal as the pandemic keeps on taking unexpected turns. The pandemic has resulted in disruptions to the supply chain and, with it, the supply of personnel, material and equipment to ongoing energy projects in most countries around the world. This is currently the source of major disputes between owners, contractors, and joint-venture partners, who battle, *inter alia*, on whether COVID-19 and the related governmental restrictive measures qualify as *force majeure* events exempting parties from any liability or government events giving rise to compensation obligations.

In addition, the pandemic may have already disrupted the push to roll back on fossil fuels and to embrace renewable energy. The continued push to transition away from primary fossil fuels to cleaner sources of energy, as recently illustrated in COP26, may nonetheless remain, in the long run, the factor with the most impact on the oil & gas sector.

Factors such as climate change, the transition to net-zero, the increased pressures to invest in new, improved and



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more sustainable technologies like carbon capture, nuclear energy, and renewable power and the continuous pressure on energy companies to improve their environmental, social and governance (ESG) strategies are transforming the legal landscape in the energy sector.

This transformation and the resulting increased accountability requirements are giving rise to significant international commercial and investment protection disputes. This transformation is also giving rise to increased disputes in relation to the construction of new types of energy infrastructure projects, such as solar parks, and the decommissioning and retirement of old infrastructure assets, such as coal plants.

This Jus Mundi report aims to explore the current landscape of arbitration in the oil & gas industry.



Economic Landscape of Oil & Gas Arbitration

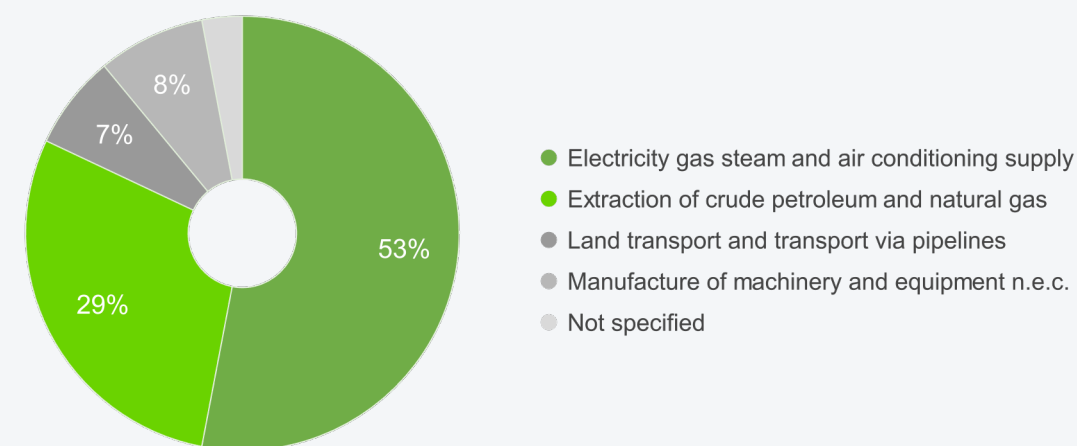
Disputes within the oil and gas sector have been increasing over the decades and will most likely continue. Geopolitical instability, oversupply/capacity, macroeconomic events such as recession or inflation affect prices all along the value chain.

The general landscape is unpredictable because oil & gas are not only commodities, but they are also the source of geopolitical power. For instance, we have seen the United States rising to become the world's biggest producer of crude oil within a decade. OPEC (Organization of the Petroleum Exporting Countries) & non-OPEC countries form complex-always-changing-alliances that disrupt the market. Other factors can influence the price of oil & gas. For example, following the Covid-19 pandemic and oversupply of early 2020, the crude oil price crashed to 18\$ in April 2020 to rise up to 80\$ in November 2021. Oil & gas arbitrations get a lot of attention because it involves geopolitical powers and because there are billions of dollars at stake. Out of the 10 largest investment awards rendered, 6 concern oil & gas disputes.

Oil & gas disputes can be complex as it involves quite a few parties and interests. Suppliers, customers, contractors, and governments are involved in oil & gas disputes which are most often due to events that impact on the energy demand and supply. In such cases, companies joint ventures with divergent interests or long-term supply agreements can lead to disagreements.

For the latest, LNG agreements are the perfect example as they can result in critical situations affecting the market downstream and upstream, pushing contractors to renegotiate or terminate their agreements. Finally, claims may also be brought against host states under bilateral and multilateral investment treaties.

The oil & gas disputes have unique peculiarities but can still be distinguished into several general types. We have categorized the cases into sectors and sub-sectors according to the [Standard Industrial Classification of All Economic Activities \(ISIC\)](#) to seamlessly deliver precise search results with our [economic filter](#) in the search engine.



Oil & Gas Arbitration Cases on Jus Mundi

At the time of writing, various arbitration institutions have not yet published their caseload reports for 2021. Looking at 2020, the ICC (International Chamber of Commerce) mentioned that the energy industry generated the second largest number of arbitration cases. Similarly, the LCIA (London Court of International Arbitration) stated that energy was their number one sector of arbitration cases.

For this report, we decided only to survey the data you can access, double-check and follow on Jus Mundi. Overall, we have found **743** arbitration cases available for oil & gas disputes. Our database is updated daily, so more cases are added for thorough legal research.

If you want to access all cases introduced in 2021, please refer to [Annex 1](#) below, containing the table of the oil & gas arbitration cases.

Tooltip

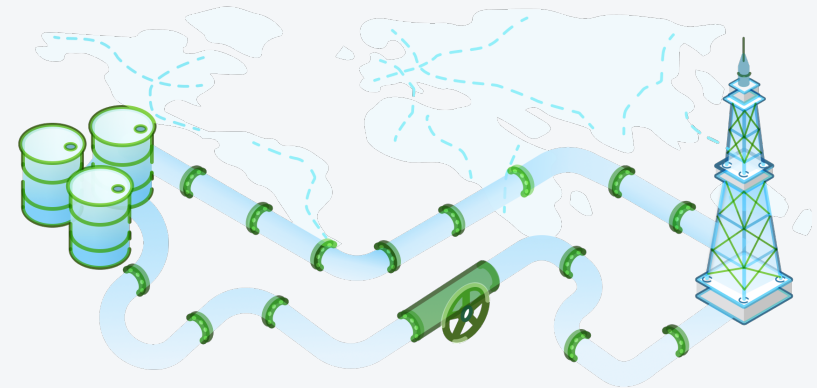


Try Jus Mundi's new Monitoring features to get alerts on cases, arbitrators, or any searches
#legalintelligence

Tooltip



Jus Mundi's open access policy allows any user to access the data without an account or a premium subscription.



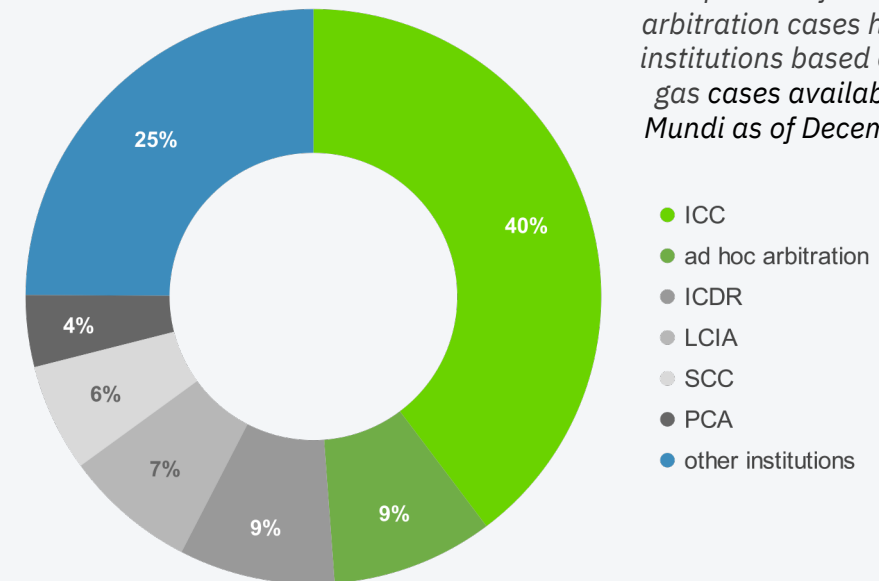
Most Selected Arbitration Institutions

We looked at all cases relating to oil & gas arbitration and decided to show the popularity of institutions differentiating between commercial and investor-state arbitrations.

Our survey revealed a total of **25 arbitral institutions** which administered oil & gas arbitrations. The charts show the evolution of the institutional arbitration activity over two decades.

Key Takeaways

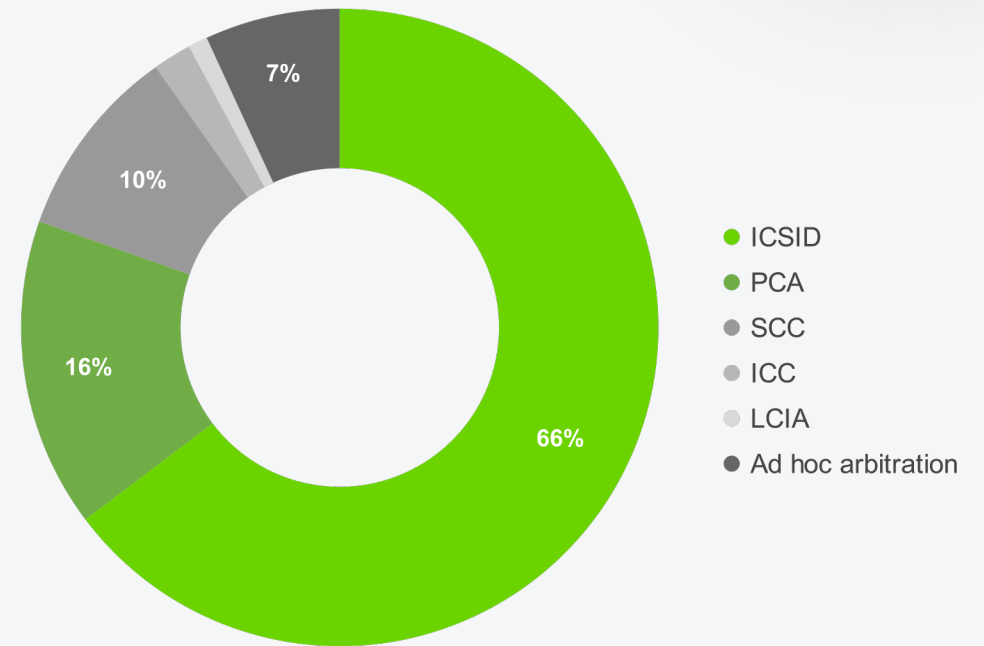
- **ICC** (International Chamber of Commerce) is the undisputed primary institution in oil & gas commercial arbitration
- **Top 5** institutions administered **64%** of all oil & gas arbitration cases
- **Ad hoc** arbitrations have become less prevalent over the decades but still represent **9%** of all oil & gas arbitration cases
- Over the decade, **ICDR** (International Centre for Dispute Resolution) & **LCIA** (London Court of International Arbitration) became key institutions administering oil & gas arbitrations.



Naturally, investor-state disputes do not involve as many arbitral institutions as commercial cases. We looked at all cases relating to oil & gas investment arbitration in our data, and only **6 institutions** came out.

Key Takeaways

- No surprise here, **ICSID** (International Centre for Settlement of Investment Disputes) is the uncontested investor-state institution administering oil & gas disputes
- **PCA** (Permanent Court of Arbitration) and **SCC** (Stockholm Chamber of Commerce) were more solicited over this past decade
- **Ad hoc** oil & gas investor-state arbitrations lost popularity over these past 10 years but still represent **7%** of all investment arbitration cases



*Proportion of **investor-state** arbitration cases handled by institutions based on all oil & gas cases available on Jus Mundi as of December 2021*

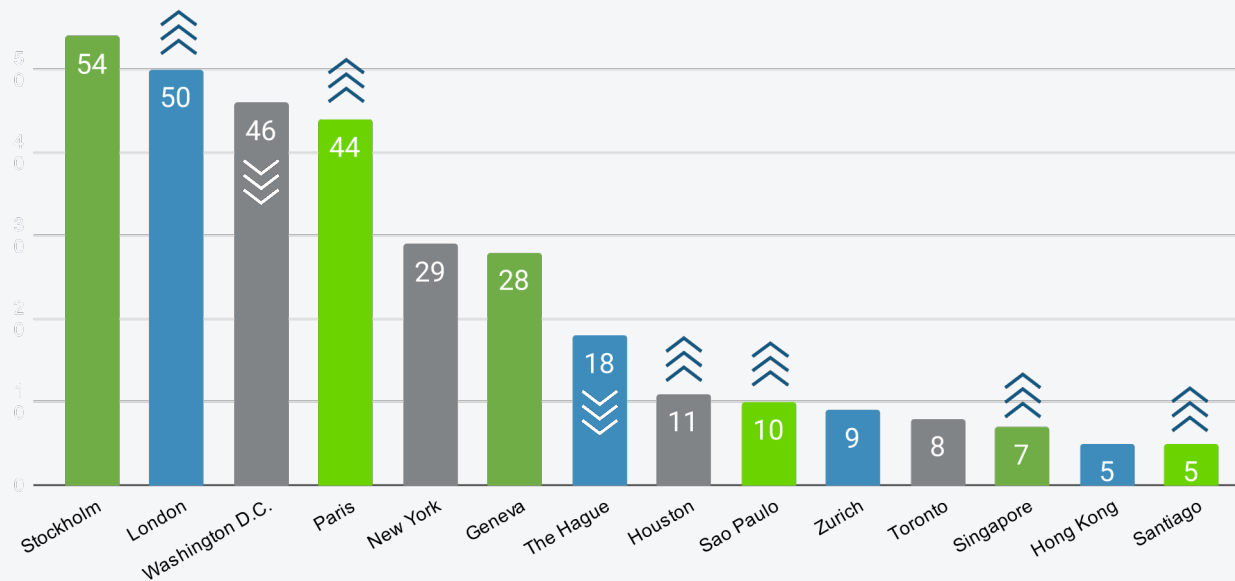
Tooltip



Try our institutions and arbitration rules filters.
Use CiteMap for rules of arbitration to find related jurisprudence based on arbitration rules.

Most Popular Arbitration Seats

The selection of the seat in oil & gas arbitration is an important strategic choice. Selecting an improper seat can result in several procedural and practical difficulties. Our survey revealed **65 distinct seats** in oil & gas arbitrations. Some have been popular for a long time, and others just stood out.



Note: displaying number of times top 14 seats were selected in oil & gas arbitration cases available on Jus Mundi as of December 2021. Up and down arrows represent the popularity of the seats over the past decade.

Key Takeaways

- **Top 5** selected seats are **Stockholm, London, Washington DC, Paris, and New York**
 - Stockholm is now the prime seat choice for investor-state arbitrations.
 - Paris remains equally strong in both commercial and investor-state arbitrations.
 - The past decade has consolidated London's position as the undisputed seat choice for oil & gas commercial arbitration.
- Over the past decade, some very popular seats like **Washington DC** and **The Hague** have lost some momentum and whereas others have been more solicited like **London, Paris, or Houston**.
- **Sao Paulo** has recently emerged as one of the favorite seats for oil & gas arbitration.
- Watch the newcomer: **Santiago de Chile**

Most Appointed Arbitrators

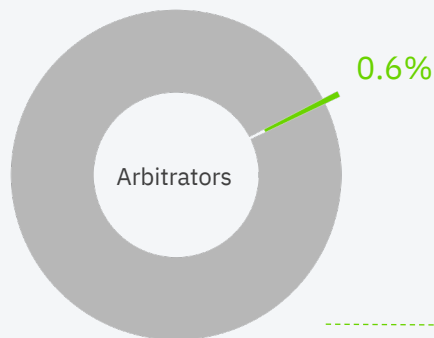
The selection of arbitrators is a crucial step of the arbitration process. Oil & gas disputes are no exception.

Finding the right arbitrator can be a cumbersome task, especially for a specific industry. At the time of writing, Jus Mundi's [directory](#) contains almost **6000** arbitrator profiles, of which **756** have appeared in oil & gas arbitrations.

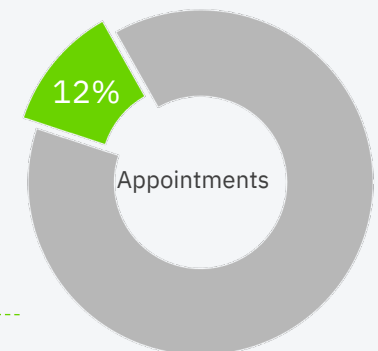
The chart below lists the names of the top 10 arbitrators in oil & gas arbitration as per our database. We have added some arrows ⇨ to show you the two arbitrators (out of this top 10) who have been particularly active this past decade, namely [J. Christopher Thomas](#) and [John Beechey](#).

It is also worth mentioning those names who have been very active over the past 10 years and who did not make it (yet) to this top 10: [Poncet Charles H.](#), [Stanimir A. Alexandrov](#) , [Zachary Douglas](#), [Gary B. Born](#), [David R. Haigh](#), [Laurent Lévy](#).

Top 10 arbitrators represent **0.6%** of all arbitrators involved in oil & gas arbitrations



Top 10 arbitrators represents **12%** of all appointments of arbitrators in oil & gas arbitrations

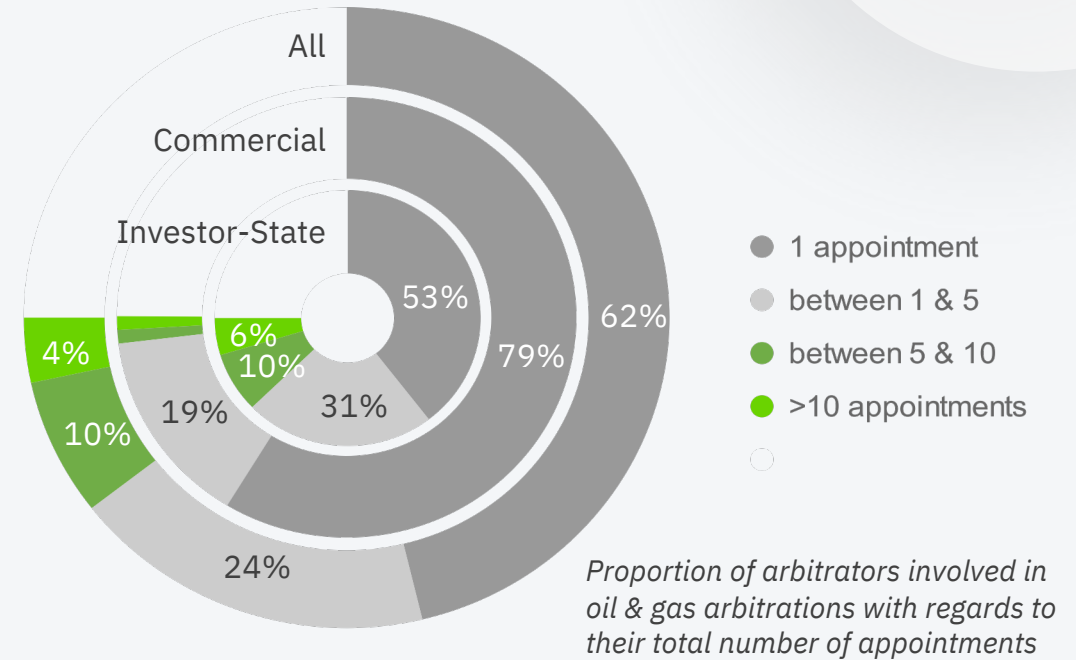


It is a popular argument to say that there is a lack of diversity in the appointment of arbitrators. We have provided you a few charts and data that will help you achieve a more objective judgement on this subject.

Note that Jus Mundi's arbitrator's analytics is a powerful unique feature showing you the whole experience of the arbitrator.

Key Takeaways

- **Top 10** arbitrators represents **12%** of all appointments in oil & gas disputes, while they represent only **0.6%** of all arbitrators involved in oil & gas arbitrations.
- **86%** of the 756 arbitrators in our database have been **appointed 5 times or less**.
- The **2 most appointed arbitrators are women**, namely [Brigitte Stern](#) & [Gabrielle Kaufmann-Kohler](#) but they are the only ones in the top 50. Yet, our database shows that within the past 5 years, some experienced woman arbitrators have been appointed in a significant number of oil & gas arbitrations, namely: [Maxi Scherer](#), [Jean E. Kalicki](#), [Wendy Miles](#), and [Dyalá Jiménez Figueres](#),
- Only **17%** of arbitrators have appeared in both commercial & investor-state arbitrations.



Tooltip



1. Jus Mundi's [Directory](#) helps you find the right arbitrator. You can filter by gender, nationality, language, and, most importantly, by economic sector.
2. Jus Mundi's [Conflict Checker](#) allows you to check conflict of interests in seconds.

Most Active Law Firms



Jus Mundi's data survey revealed **762** active law firms with oil & gas arbitration caseload. In the methodology used to analyze this data, we considered both commercial and investment arbitrations to provide a better overview of the key players in the market. We identified the top 10 law firms and added them to the left-hand side of this page.

Note: we recently launched the firm profiles in response to in-house counsel's needs to find the most suitable external counsel. Each attorney can also enrich their profile on Jus Mundi's directory at an individual level.

Key Takeaways

- **Top 10** law firms' hires combined (340) represents **16%** of all law firms' hires (2110) in oil & gas arbitration cases. **Top 3** law firms represent **8%** of all hires.
- Even though [Gibson Dunn & Crutcher](#) and [Squire Patton Boggs](#) are not (yet) part of this top 10, they have emerged as key players within the past decade.
- Within the past five years, [Three Crowns](#) and [White & Case](#) showed the most traction as top oil & gas arbitration firms.

Tip



Get a 360-degree overview on your external counsel's expertise using Jus Mundi's [firm profiles](#).

Most Active Expert Firms

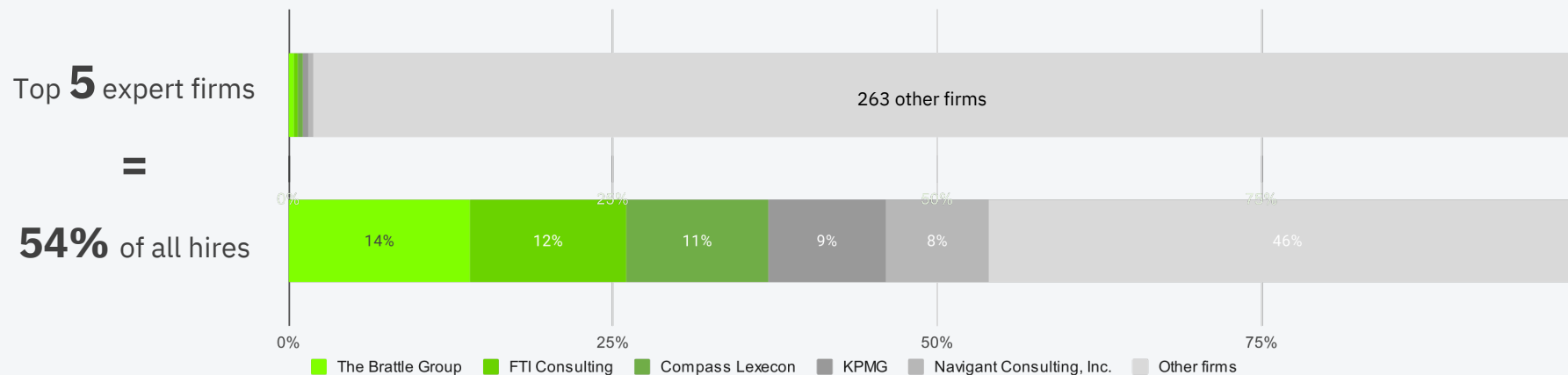
Expert firms are often solicited in oil & gas arbitration to address the complexity of the issues at stake and assess damages. Parties & tribunals rely heavily on those experts.

Expert evidence is of paramount importance in providing clarification, knowledge, and technical assessment of complicated issues. See our [article below](#).

The survey of our data shows that 268 expert firms were solicited in oil & gas arbitrations. However, their popularity fluctuates from one decade to another. Some went off-grid, like [LECG LLC](#), a top consultant but stopped in 2011, while others have emerged as key players.

Key Takeaways

- Top 5 experts firms represent 54% of all hires. It includes [The Brattle Group](#), [FTI Consulting](#), [Compass Lexicon](#), [KPMG](#), and [Navigant Consulting Inc.](#)
- [Accuracy](#) and [BDO](#) are the hot expert firms of the decade.
- [Berkeley Research Group](#) has the most traction within the past 5 years.
- [Navigant Consulting Inc.](#) went down from 1st to 5th place within a decade.
- Top 10 also includes [Econ One Research Inc.](#), as well as [PricewaterhouseCoopers \(PwC\)](#), and [Charles River Associates \(CRA International\)](#).



Oil & Gas Arbitration Case Analysis

Niko Resources (Bangladesh Limited) V Bangladesh Petroleum Exploration & Production Company Limited (BAPEX) and Bangladesh Oil Gas and Mineral Corporation (Petrobangla)

ICSID ARB/10/18 | Award dated 24 September 2021

The facts

- This award relates to disputes arising out of commercial contracts relating to the Feni and Chattak gas fields in Bangladesh. These two fields are owned by Bangladesh Petroleum Exploration & Production Company Limited ("**BAPEX**"), which is a wholly-owned subsidiary of the Bangladesh Oil Gas and Mineral Corporation ("**Petrobangla**"), which is the Bangladesh national oil company.
- The Parties to the dispute are, on the one hand, the Claimant Niko Resources (Bangladesh) Limited, a company registered in Barbados with office presence in Cyprus ("**Niko**") and, on the other hand, (i) the People's Republic of Bangladesh (the "**Government**"), (ii) Petrobangla and (iii) BAPEX.
- On 16 October 2003, Niko entered into a joint venture agreement (the "**JVA**") with BAPEX by virtue of which Niko would act as the developer and the operator of the Feni and the Chattak fields, and Petrobangla would purchase the produced gas (the "**Joint Venture**"). Production from the Feni field started in November 2004. However, in 2005 two blowouts occurred in the Chattak field, and production never started.



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- The Joint Venture then concluded with Petrobangla a Gas Purchase and Sale Agreement dated 27 December 2006 (the "**GPSA**"). After the execution of the GPSA, Niko requested payment for the gas produced and delivered as from November 2004. However, Petrobangla never paid the invoices.
- In 2010, Niko commenced arbitration proceedings against the People's Republic of Bangladesh, Petrobangla, and BAPEX (together, the "**Respondents**") in respect of a dispute which the Respondents had brought against Niko before the Court of District Judge in Bangladesh claiming damages in relation to the two blowouts in the Chattak field.
- Later that year, Niko commenced a subsequent arbitration proceeding against the Respondents under the GPSA, seeking the recovery of outstanding payments for the gas produced and delivered from November 2004.
- The two arbitration proceedings were heard jointly by two arbitral tribunals composed of the same arbitrators. The Parties and the Arbitrators agreed that the two Tribunals will hear and address both disputes simultaneously and would issue decisions relating to the first, second, or both disputes together.

The Arbitral Tribunal

The Arbitral Tribunal in the two proceedings was composed as follows:

- Professor Jan Paulson of Sweden and France, appointed by the Claimant;
- Professor Campbell McLachlan QC of New Zealand, appointed by the Respondent; and
- Mr Michael E. Schneider of Germany, as President of the Arbitral Tribunal.

The Tribunal's Decision on Jurisdiction

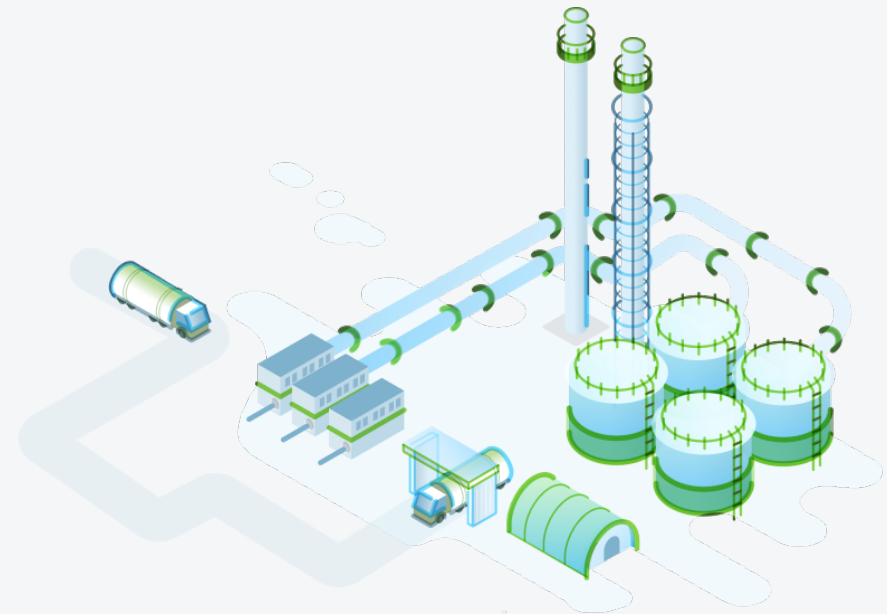
The Respondent raised a number of jurisdictional objections, which were dealt with by the Tribunal as a preliminary matter:

Ground 1: Nationality of the Claimant. The Respondent argued that, Niko, the Claimant, was not the real party to the JVA or the GSPA. Niko is fully owned, controlled and financed by its parent company, Niko Canada, who negotiated and financed the JVA and the GSPA and who should be considered to be the investor in Bangladesh. On this basis, the Respondent argued that, given that Canada is not party to the ICSID Convention, Niko should not be able to start arbitration under the ICSID Convention.

The Tribunal rejected this ground on the basis that the Respondents were aware of, had carefully considered and indeed accepted the Claimant's corporate structure and its registration in Barbados. The Tribunal confirmed its jurisdiction under the ICSID Convention and found that the Respondent should be precluded from arguing that the Barbados entity of Niko is not the real party to the JVA and the GSPA.

Ground 2: the Government is not party of the JVA and the GSPA. The Respondents argued that the Government is not party to the JVA and the GSPA and could not have consented to the arbitration agreements contained in them

The Tribunal found that the Government was not a party to the JVA or the GSPA and that it had not consented to arbitration under those agreements. The Tribunal further found that BAPEX and Petrobangla were separate legal entities that are distinct from the Government, even though the Government exercised control over them. The Tribunal further rejected the Claimant's argument that acts of Petrobangla and BAPEX are attributable to the Government in this case. The Tribunal recalled that attribution of wrongful acts to the State could only arise from the violation of international legal obligations, whereas in this case, it was a matter of determining whether the Government consented to the arbitration clauses under the JVA and the GSPA.



Ground 3: BAPEX and Petrobangla's designation to ICSID. The Respondents argued that BAPEX and Petrobangla had not been designated to ICSID as required under Article 25(1) of the ICSID Convention.

The Tribunal noted that Article 25(1) of the ICSID Convention did not prescribe a particular form for the designation and that, in this case, designation occurred at the latest when the Government approved the consent of the agencies to arbitration under the JVA and the GPSA.

Ground 4: Dispute arising directly out of an investment. The Respondents accepted that the JVA may qualify as an investment in Bangladesh but argued that the GPSA is a sales agreement and therefore does not qualify as an investment under the ICSID Convention.

The Tribunal found that Niko's activities pursuant to the JVA (including the funding of the operations and the bearing of risk) relate to an investment project, consisting in the development of gas fields, and therefore qualify as an investment. The Tribunal noted the Respondents' agreement in this respect. The Tribunal further found that the GPSA is not a simple sales agreement but a long-term commitment by Niko involving significant expenditures which contributed to Bangladesh's economic with the risks of non-recovery. The Tribunal, therefore, found that the GPSA in isolation does qualify as an investment under the ICSID Convention.

Ground 5: Illegal Acts, Good Faith and Clean Hands. The Respondents argued that Niko had committed various acts of corruption (including those referred to in a 2005 conviction of Niko by the Canadian justice for acts of bribery in Bangladesh) and that, therefore it may not benefit from the agreements in general and from the ICSID arbitration clause in particular.

The Tribunal examined all of the corruption allegations brought by the Respondents and found that, apart from the acts of corruption referred to in a 2005 conviction of Niko by the Canadian justice, none of the other allegations were demonstrated. With respect to the Canadian justice conviction, the Tribunal found that there was no allegation by the Respondents that these specific acts of corruptions in any way influenced the conclusion of the JVA or the GPSA. This was confirmed by both the Canadian and Bangladeshi justices.

The Tribunal's Decision on The Payment Claims

The Tribunal issued a number of payment decisions throughout the life of this arbitration, the first in September 2014, the second in September 2015, the third in May 2016, and a final Award in September 2021 confirming the Tribunal's earlier decisions.

First Decision: the Claimant sought payment for the gas delivered to Petrobangla as from 2 November 2007. Petrobangla contended that, even though these payments may be due under the GPSA, (i) these payments would be contrary to Bangladesh law, (ii) the GPSA had been frustrated by a Bangladesh court's order and was therefore terminated, and (iii) the GPSA was procured through corruption and is therefore void.

The Tribunal dismissed those arguments, finding that the payments are clearly due under the GPSA and that there was no justification for the Respondents not to comply with their payment obligations under the GPSA. The Tribunal, therefore, ordered Petrobangla to pay the Claimant for the gas supplied between November 2004 and April 2010, plus interest.

Second Decision: The Parties engaged in discussions to settle the dispute. However, no agreement was reached. Accordingly, in November 2014, the Claimant applied for provisional measures regarding the implementation of the First Decision. The Respondents requested that a decision on the outstanding amounts be made only after all issues with respect to the Claimant's liability for the blowouts were resolved.

The Tribunal saw no justification for Petrobangla to withhold the funds owed to the Claimant any further but nevertheless agreed to preserve the funds owed to the Claimant in case the latter was found to be liable for damages in respect of the blowouts. Accordingly, the Tribunal directed that the outstanding amounts under the GSPA be paid by Petrobangla to an escrow account.

Third Decision: The Parties negotiated the execution of an escrow agreement, but the Respondents ultimately refused to sign it, relying on an injunction from a court in Bangladesh as preventing payment of the outstanding amounts. Then in March 2016, the Respondents raised a corruption claim and requested that the Tribunal vacate the First and Second Decisions. In turn, in May 2016, the Claimant applied for an interim measures for the payment of the outstanding amounts.

The Tribunal issued the Third Decision, dismissing yet again the Respondent's arguments and requiring the Respondents to make immediate payment of the outstanding amounts.

Final Award: The Tribunal went to issue its final award on the payment issues on 24 September 2021. The Tribunal confirmed all previous decisions and ordered the Respondents to pay all outstanding amounts due to the Claimant, notwithstanding any Bangladesh court decision to the contrary. Given the difficulties that the Claimant faced to recover the payment of unpaid invoiced, the Tribunal decided that it would remain seized with the matter until the Respondents had paid all outstanding amounts.

Finally, the Tribunal found that the Respondents should cover a substantial portion of the Claimant's legal fees and that it should bear 88% of the arbitration costs.

The views and opinions expressed in this article are those of the author(s) and do not necessarily reflect the opinions or position of Ashurst or its other employees

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*** Cameron Cuffe** specialises in international arbitration with a focus on engineering and construction-related disputes. Cameron has acted as counsel in numerous domestic and international arbitrations under the ICC, LCIA, and DIAC arbitration rules as well as UNCITRAL ad-hoc arbitrations. He also advises clients in relation to expert determinations, dispute adjudication boards, adjudications, and mediations. Cameron's cases have included complex engineering and construction-related issues associated with rail, road, port, and sports infrastructure projects, airports, process plants, oil and gas facilities, as well as power and water plants.

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The Experts' Tip

Time to review the approach to LNG price reviews in Asia

The Asian LNG market has traditionally been dominated by long-term LNG supply agreements (LNG SPAs) between the gas user or utility and the supplier of the LNG. This model is being eroded by the increased reliance on short- and medium-term contracts, trading strategies which exploit destination flexibility and portfolio optimisation, and growing demand for LNG, particularly from new LNG consuming nations in South and South-East Asia.

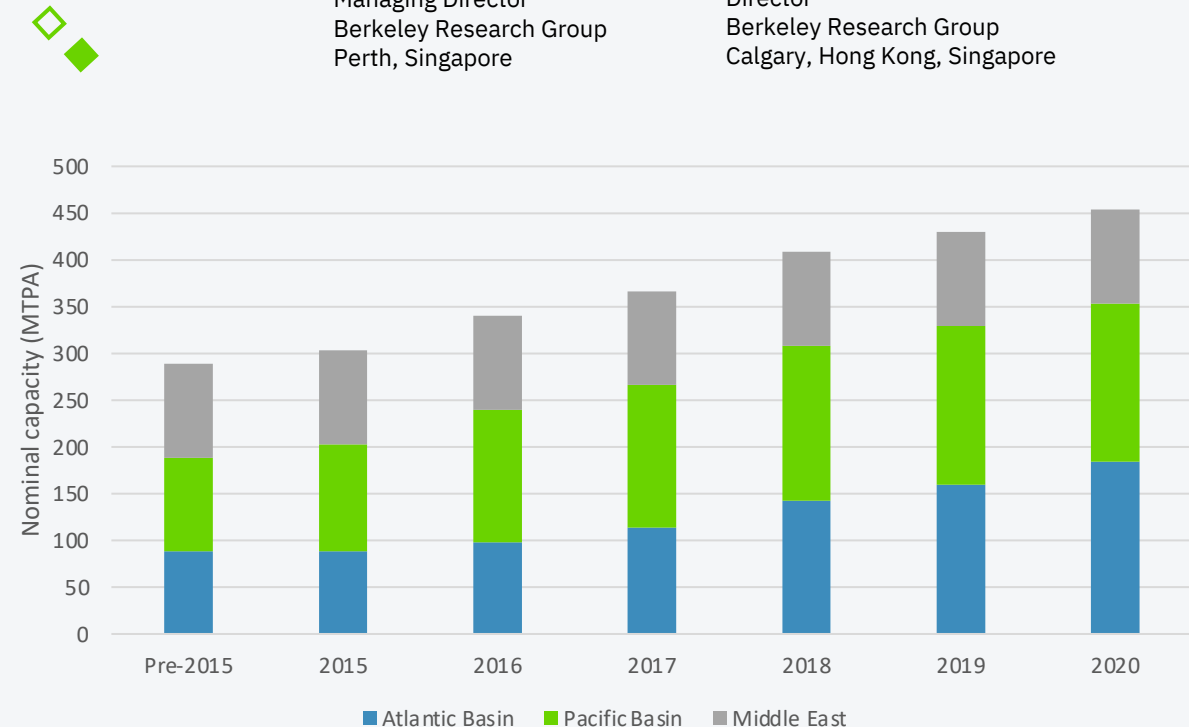
Traditionally, price review mechanisms in long term LNG SPAs in Asia were more limited in scope than their European counterparts, with less direct routes to formal disputes. As a result there were few formal price disputes (though renegotiations were common). In the last decade LNG price reviews in Asia have increased, both due to the increased prevalence of price review clauses in LNG SPAs, and to changes in market conditions (e.g. Fukushima, the rise of hub-based pricing in Europe and the USA) which caused oil-linked Asian LNG import prices to diverge from the price of other sources of LNG. Many LNG SPAs linked to new liquefaction capacity which has come online since 2015 (see chart right-hand side) will also likely be entering their price review windows within the next several years.



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Total LNG liquefaction plant capacity by region

Current market conditions and emerging trends within the global and regional energy industry are likely to give rise to more complicated price review disputes. In this article, we consider some key issues facing both buyers and sellers when seeking to identify when a dispute is appropriate and how to manage it.

First, there has been a general reluctance for parties to Asian LNG SPAs to initiate price reviews. This is often a result of the party being unsure about whether they can trigger a review, whether they have a valid basis to do so, and whether they can reliably predict the likely outcome of the dispute.

Reasons why a price review dispute may not have been triggered

a. The LNG price review mechanism is not well defined

Every LNG price review clause differs, although they may broadly be classified as price review, price re-opener, or 'meet-and-greet' clauses. The commercial rationale for each type of clause often reflects the status of the liquefaction plant, the marketplace, and the respective position of the buyer/seller at the time of the contract. For example, the project finance lender to a greenfield project may prefer to avoid defined price re-openers as this may undermine their security and would favour the less well-defined meet-and-greet style of review. While each type of clause provides scope for reconsidering a contract price, the likelihood of a formal dispute process being triggered varies significantly depending on the form of the clause.



b. The buyer has expanded internationally and/or undertaken a role as an aggregator

A traditional gas utility had a relatively well-defined business and market. Now, the ability to define the buyer's home market (as opposed to a region) is blurred, as many traditional utilities have expanded their business internationally and domestically or have undertaken significant aggregation, trading, and optimisation activities. This increases the complexity of the dispute, the solution, and by definition, the challenges faced by the parties. The expansion of the buyers' market may also provide it with the ability to manage swings in prices more effectively than in the past, reducing the impetus for a price review.

c. Significant volatility in gas and LNG pricing

The COVID-19 pandemic and the related global response has led to significant volatility in gas hub pricing as well as the various crude oil and other commodities that may be inputs within an LNG price formula. The chart below shows the sharp increase in Japanese LNG import futures (JKM) from near historic lows in early 2020 against the still significant increase in European gas hub prices (TTF) and the relatively steadier US gas hub price (Henry Hub). In this environment, price movements that place one party at a disadvantage may be temporary, and a price review triggered in one price environment may ultimately be decided in another, with entirely different implications for the outcome.

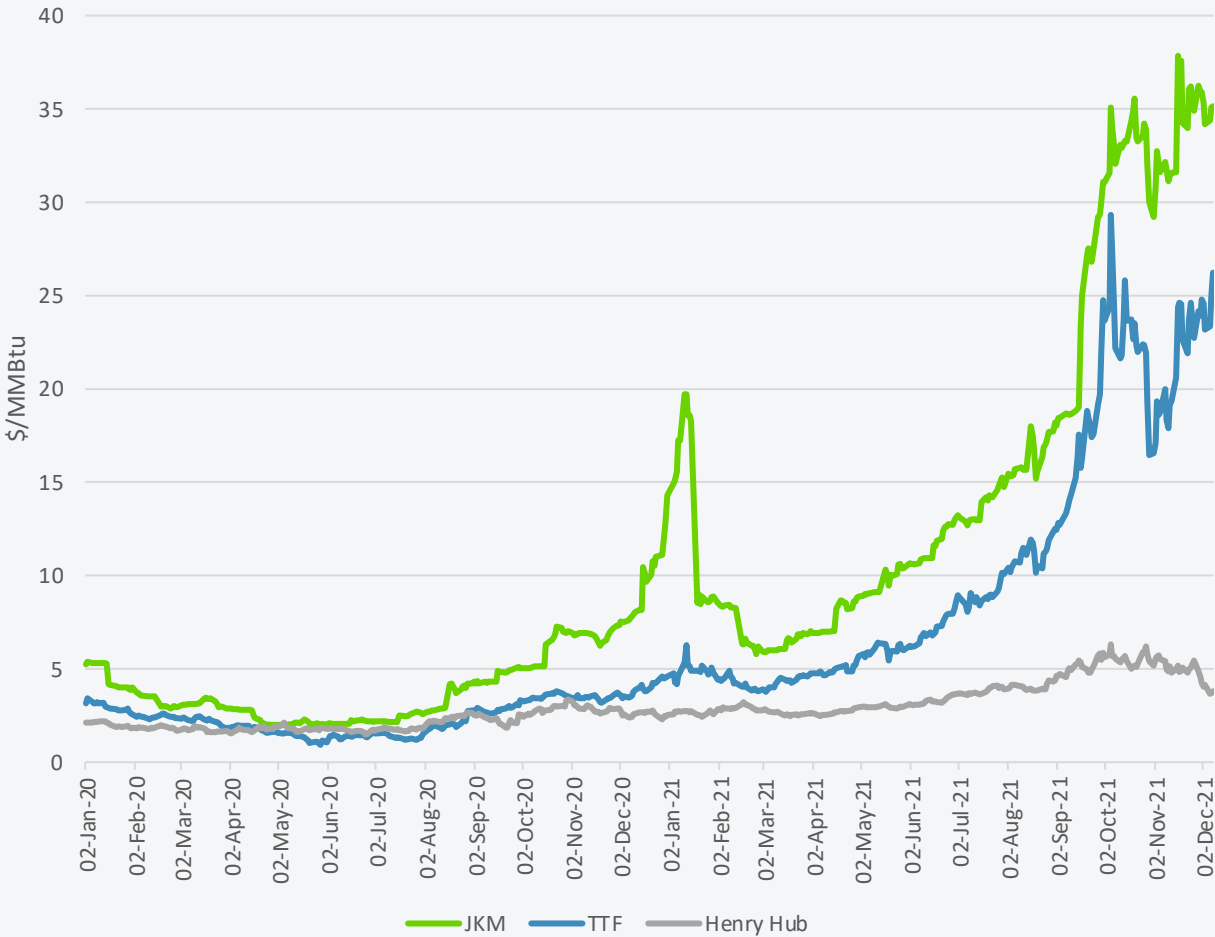
Emerging issues which may impact future price review disputes

Second, there are a number of emerging issues which parties to Asian LNG SPAs are bearing in mind as they consider their price review strategy going forward.

In particular, the ‘Energy Transition’ to low carbon sources will have a number of direct impacts on LNG pricing and the flexibility of demand. It has also led to the indirect consequence of the break-up of the traditionally integrated LNG value chain. The challenge has always been to manage the weakest link in the chain, but with more links arising, the chance of disruption increases, which impacts LNG price evolution.

a. The price of carbon is yet to be fully regulated and defined

Will this cost attach to the upstream gas producer, the liquefaction facility, the gas utility, or the end-user? As companies seek to approach net-zero through carbon capture and other strategies, how will these costs be allocated across a supplier’s portfolio of LNG contracts?



Regional gas and LNG prices

b. More links in the chain taking low risk fixed returns

Increasingly, infrastructure investors have carved-out aspects of the value chain, such as pipelines, storage tanks, liquefaction trains, ships, and common facilities. Many of these transactions have seen long-term contractual utilisation arrangements implemented so as to release cash to the seller. These utilisation obligations and the associated tariffs may influence the evolution of the LNG price irrespective of other market conditions.

c. Suitability of regional LNG price hubs to reflect local market conditions

Although the JKM is used as a proxy for Asian regional LNG prices, it is not a true reflection of prices, nor does it adequately reflect regional market differences. As LNG buyers diversify their supply portfolio and engage in trading and optimisation activities, it becomes ever difficult to define local market prices, and the temptation may be to rely on regional benchmarks such as JKM. This may be unsuitable for emerging LNG consuming nations, which tend to operate within a tightly defined gas price range.

The evolution of these and other LNG price review issues and the emergence of new challenges to LNG prices mandate a considered approach to managing price reviews and disputes. The issues that parties, legal counsel, and arbitrators will have to grapple with in the coming years will be increasingly complex. A deep understanding of the trends identified above will help to formulate successful LNG price review strategies.

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Annex 1 – Oil & Gas Arbitration Cases filed in 2021

CASE	INSTITUTION	TYPE	DATE
<u>Enel, S.p.A. v. Republic of Turkey</u>	ICSID	Investor-State	2021-12-10
<u>VINCI Highways SAS and VINCI Concessions SAS v. Republic of Peru</u>	ICSID	Investor-State	2021-12-10
<u>Grupo Energía Bogotá S.A. E.S.P. and Transportadora de Energía de Centroamérica S.A. v. Republic of Guatemala (II)</u>	ICSID	Investor-State	2021-12-09
<u>Metro de Lima Línea 2, S.A. v. Republic of Peru (III)</u>	ICSID	Investor-State	2021-12-06
<u>TC Energy Corporation and Transcanada Ltd. v. United States of America</u>	ICSID	Investor-State	2021-11-22
<u>Energía y Renovación Holding, S.A. v. Republic of Guatemala</u>	ICSID	Investor-State	2021-11-15
<u>KELAG-Kärntner Elektrizitäts-Aktiengesellschaft and others v. Romania</u>	ICSID	Investor-State	2021-11-01
<u>SREW N.V. v. Ukraine</u>	ICSID	Investor-State	2021-10-28
<u>Discovery Global LLC v. Slovak Republic</u>	ICSID	Investor-State	2021-10-22
<u>ESSA2 SpA and Enel Green Power Costa Rica S.A. v. Republic of Costa Rica</u>	ICSID	Investor-State	2021-10-13
<u>TS Villalba GmbH and others v. Kingdom of Spain</u>	ICSID	Investor-State	2021-09-16
<u>Eni S.p.A. v. Republic of Ghana</u>	SCC	Commercial Arbitration	2021-09-01
<u>Democratic Republic of the Congo v. Caprikat Limited and Foxwhelp Limited</u>	ICC	Commercial Arbitration	2021-08-13
<u>Spanish Solar 1 Limited and Spanish Solar 2 Limited v. Kingdom of Spain</u>	ICSID	Investor-State	2021-08-03
<u>Exxon Mobil Corporation v. Basra Oil Company</u>	ICC	Commercial Arbitration	2021-07-26

CASE	INSTITUTION	TYPE	DATE
<u>WhiteWater Midstream LLC v. Comisión Federal de Electricidad</u>	LCIA	Commercial Arbitration	2021-07-02
<u>World Natural Resources and WNR Congo v. Mercuria Energy Trading, Mercuria Capital Partners and Energy Complex DMCC</u>	ICC	Commercial Arbitration	2021-06-15
<u>Anglo American plc v. Republic of Colombia</u>	ICSID	Investor-State	2021-06-02
<u>Corporación Eléctrica del Ecuador v. Sinohydro Corporation</u>	ICC	Commercial Arbitration	2021-05-17
<u>Goldman Sachs Group, Inc. v. Comisión Federal de Electricidad</u>	-	Commercial Arbitration	2021-05-17
<u>Interconexión Eléctrica S.A. E.S.P. v. Republic of Chile</u>	ICSID	Investor-State	2021-05-17
<u>Mainstream Renewable Power Ltd and others v. Federal Republic of Germany</u>	ICSID	Investor-State	2021-05-13
<u>Sunrise Power and Transmission Company v. Federal Republic of Nigeria</u>	ICC	Commercial Arbitration	2021-05-11
<u>Uniper SE, Uniper Benelux Holding B.V. and Uniper Benelux N.V. v. Kingdom of the Netherlands</u>	ICSID	Investor-State	2021-04-30
<u>IPR Wastani Petroleum Ltd. v. Dana Gas PJSC</u>	LCIA	Commercial Arbitration	2021-04-28
<u>Perupetro S.A. v. Pluspetrol Norte S.A. (PPN), Korea National Oil Corporation, Posco Daewoo Corporation and SK Energy</u>	ICC	Commercial Arbitration	2021-04-20
<u>World Natural Resources v. Republic of the Congo</u>	ICSID	Investor-State	2021-04-13
<u>Modus Energy International B.V. v. Ukraine</u>	SCC	Investor-State	2021-04-01
<u>Shell Petroleum N.V. and The Shell Petroleum Development Company of Nigeria Limited v. Federal Republic of Nigeria</u>	ICSID	Investor-State	2021-02-10
<u>RWE AG and RWE Eemshaven Holding II BV v. Kingdom of the Netherlands</u>	ICSID	Investor-State	2021-02-02
<u>Braskem Idesa v. Petróleos Mexicanos</u>	ICC	Commercial Arbitration	2021-01-20
<u>ICC Case - ID No. 1658</u>	ICC	Commercial Arbitration	2021-01-01
<u>ICC Case - ID No. 1660</u>	ICC	Commercial Arbitration	2021-01-01
<u>Carlos Manuel de São Vicente v. Republic of Angola</u>	SCC	Investor-State	2021-01-01
<u>Servicios Petroleros Igapó S.A. v. Empresa Pública de Hidrocarburos del Ecuador EP PETROECUADOR</u>	PCA	Commercial Arbitration	2021-01-01



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