



Commercial Disputes

Supporting the gas and LNG industry





Disputes in the changing global gas market

Global gas markets have experienced a significant dislocation in the last decade. Market liberalisation has created increased competition and structural shifts in market organisation. Together with changes in global supply and demand dynamics and dramatic shifts in pricing, the operating environment has become particularly challenging and uncertain.

In a low price environment, where profit margins are thin and managing costs is a high priority, a number of new trends have emerged in relation to disputes and arbitration. Buyers and sellers are increasingly finding themselves trapped between the need for resolution because they can't afford to live with the problem, and the potentially high costs of arbitration where outcomes are uncertain. This is leading to attempts to settle disputes through negotiation, more aggressive management of costs of arbitration, and consideration of new approaches, such as mediation. In this environment, the interests of different parties in a dispute are frequently more aligned, increasing the likelihood of reaching a long-term resolution.

Disaggregation of LNG value chains, unbundling of assets in Europe, and the emergence of new players in the gas and LNG markets have created more and more complex contractual interfaces. In the context of an ever more interconnected global gas market, the scope of issues relevant to any given dispute is increasing.

In Europe, with the divergence of oil-linked gas and LNG prices from traded hub gas market prices (TTF, NBP), buyers with long-term gas supply contracts have been increasingly triggering litigious price reviews. There is often little commercial alternative to doing so: retail market share is being lost to new market entrants sourcing gas from hubs under short term or spot arrangements. Equally, sellers of LNG are seeking to add greater flexibility to their contracts to avoid being locked into unprofitable destination markets. Arbitration remains a risky choice for those seeking to settle disputes. In some cases, arbitrators are going beyond the narrow scope of the wording of the price review clause in reaching their decisions. In particular, they may look to put in place more sustainable resolutions to apparently never ending price disputes; they do this based on their own view of the probable longer term development of the gas market, rather than merely adjusting for historic developments.

Case Study 1 - Commercial dispute support for an Energy company

Project Outline: Gas Strategies supported a European energy company and its legal counsel over a period of nearly three years in a dispute with an upstream player in the Middle East. We joined the client at a phase of the case where previous actions had resulted in the need for damages to be paid and the quantum of those damages to be determined.

Approach: The case had many complex aspects and considerations, requiring Gas Strategies to field a broad and diverse team, including two expert witnesses; specialising in upstream commercial matters and the downstream gas market respectively.

Gas Strategies developed a series of expert reports, and recognising that these reports covered complex topics, care was taken to structure and develop the submissions in a way that would be clear for the tribunal to understand and consider. In calculating and defending the quantum of damages, our team collaborated with more than six expert witnesses who were supporting the client's case. In addition, Gas Strategies' experts undertook intensive preparation work in advance of the tribunal hearings.

Result: On the strength of argumentation put forward by the various experts and legal counsel, the client and its counterparty were able to reach a settlement prior to the final hearing; the value of which our client considered to be a successful outcome.

Case Study 2 - Price reviews for a European utility

Project Outline: Gas Strategies was appointed by a European utility company to assist in a 'strength-of-case' evaluation for two potential price reviews. Both reviews involved long term LNG supply contracts in Europe, the first with the client as the purchaser and the second as the seller.

Approach: Gas Strategies reviewed both contracts, prepared summaries of the commercial terms and undertook a specific analysis and interpretation of the price review clauses. Based on this, we discussed with the client the possible interpretations of the price review clauses, the relevant price benchmarks and the time periods over which to consider the review.

Gas Strategies also prepared an analysis of the relevant end user and border gas prices. This included a gross margin analysis for end user pricing in Europe and an analysis of border prices for the relevant markets. We quantified the potential ranges of price increase and decrease from the data analysed and provided a recommendation about the appropriate tactics the client could adopt to each of the counterparties.

Result: After a period of two years of working closely with our client and legal teams, the dispute ended in an arbitration hearing in early 2016. Gas Strategies provided an expert testimony which held up extremely well under cross examination and looks likely to have contributed to a successful outcome for the client.

Case support

Gas Strategies is one of the leading advisors in commercial and contract disputes within the gas and LNG industry. Our extensive experience includes supporting clients on disputes resolved through negotiation and arbitration. We take a collaborative approach to case support and often work with a number of other advisors. We support throughout the entire dispute process, from evaluating contracts and data analysis through to the preparation of arguments and expert reports. In addition, we provide expert witnesses to support throughout the dispute process including at arbitration.

Our team includes senior industry experts who have a combined 500+ years' experience and have acted as expert witnesses in arbitrations around the world. Our experience spans over forty dispute cases and our unrivalled commercial understanding of the industry means that we are able to bring a robust and practical perspective to the cases we support. Our ability to bring together several different perspectives within a team provides on-going peer review and challenge throughout the development of arguments and documentation.



Upstream

- Upstream infrastructure
- Gas allocation
- Breach of confidentiality
- Economic viability
- Upstream tax

Midstream

- Gas allocation
- Market access
- Gas processing
- Pipeline access
- Gas quality and blending



Downstream

- Price review
- Gas nomination
- Gas quality
- Contract termination
- Hardship
- Payment
- Take-or-pay



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