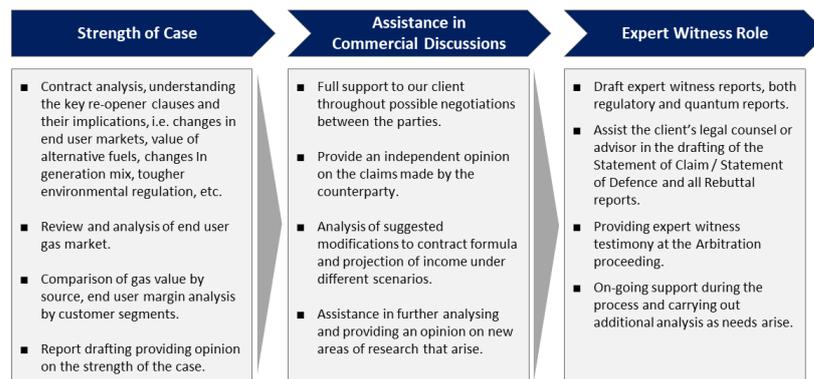


Gas Arbitration – Case Study

The following Case Study provides a summary of the work carried out by EKON experts for our client (in this case an International Oil Company (IOC)) during an arbitration proceeding as a result of a price dispute between buyer and seller in a long term Liquefied Natural Gas (LNG) contract to Spain

Our client, an LNG seller into Spain, was looking at their options for re-opening a long term Gas Supply Agreement versus a Spanish buyer (counterparty) and requested external expert advice in order to assist them in their decision making process. This project, which started off with our experts carrying out a Strength of Case analysis in order to determine whether or not our Client had a case to trigger for a price review, eventually developed into a full Arbitration with EKON team presenting expert reports and giving expert witness testimony in an arbitration proceeding. The project progressed through the following three phases as set out below.

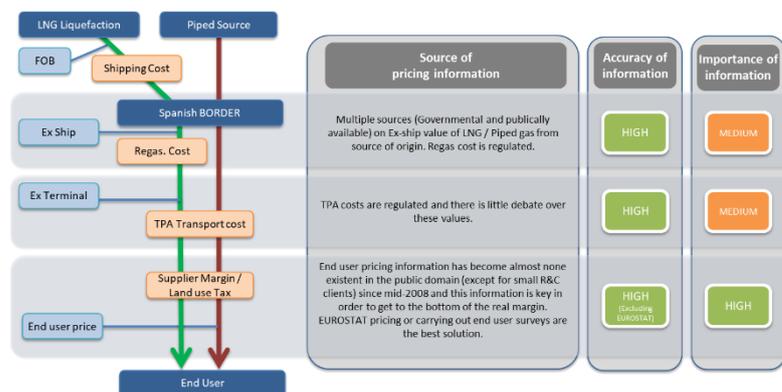


Phase 1: Strength of Case analysis

As a starting point, EKON was asked to present an updated view on the Spanish Gas and/or Electricity markets which served our client to get an updated and accurate high level view of the market and therefore be in a better position to make informed decisions with regards to the price review strategy.

EKON experts were then asked to carry out an analysis of the Gas Supply Agreement which are a key input in the Re-opener clauses determining the Strength of Case. EKON looked to ensure that a common understand was reached with our client and their legal counsel on the potential implications of these clauses on the possible outcome of the case. In order to determine the strength of potential trigger points, we were asked to carry out an exhaustive analysis and prioritisation of relevant and significant market changes which have permanently impacted on the Spanish energy markets (Gas and Electricity) and are key to understand the key leverage points in any reopener case, either to formulate an offensive or defensive strategy.

In this particular case the strength of case was to be determined by the change in value of the gas supplied under the LNG contract versus the average value of gas in the Spanish market (determined by both the border price value of gas and the value of gas to the end user) during a specific time period (known as the reference period).



Border Price Analysis

In order to determine the change in value of the gas landing in Spain, EKON has developed our inhouse internal customs database that is based on the Spanish AEAT (Customs) pricing and volume information. EKON customs database tracks the volume and value of all the gas coming into Spain via pipeline and LNG cargoes. EKON has access

to all raw data from the Spanish Customs authorities and is able to differentiate between spot purchases and long-term contract prices or by country of origin.

As part of this project EKON experts also analysed the impact of the increase in Spot purchases on the overall value of gas in the Spanish market as well as getting to the bottom of the impact of re-loading activity which had increased drastically in the preceding years.

End User Price Analysis and Gross Margin

In order to analyse the changes in the value of gas to the end users for this case, EKON experts accessed our database of end user contracts as well as publicly available end user pricing information (for example Eurostat) and were able to carry out a netback analysis to determine the Gross Margin being made by the different Client groups (Power, small, medium and large Industrial and Residential) on the gas sold by our client.

Strength of Case conclusions

Based on the comparison of the Contract Sales Price versus the average value of gas in Spain over the valid reference period, and the interpretation of the key Price Review clauses, our experts determined that there was a strong case for our client to re-open the contract and proceed to try to reach a commercial settlement with the counterparty in an effort to avoid going to arbitration. As well as providing our recommendations, EKON experts were asked to help draft the trigger letter and prepare the presentation that provided the evidence of the changes that have led to the need to re-open the contract and seek a price adjustment.

Phase 2: – Assistance in Commercial Discussions

Once our client had activated the trigger, a 120 days mandatory negotiation period was set in motion, which ultimately was unanimously extended. During this period EKON experts provided our independent opinion on the claims made by the counterparty and carried out additional analysis of suggested modifications to the contract formula as the negotiation progressed. Ultimately no agreement was reached and the case went to arbitration, with a successful verdict being handed down for our client.

Phase 3: – Support in Arbitration

Once at the arbitration stage, EKON experts carried out the following tasks:

- Assisting the client's legal council on the drafting of the Statement of Claim / Statement of Defence and all Rebuttal reports,
- Providing expert witness testimony at the Arbitration proceeding,
- On-going support during the process and carrying out additional analysis as needs arose.

EKON experts have worked on over 45 price review cases in long term LNG and piped gas contracts for both buyers and sellers and on contracts linked to the average value of gas in the market of the buyer, to Brent, to Fuel Oil / Gasoil, Competing fuels, to the value of electricity, etc.

Steven Taylor and Agustín Llana are renowned experts in the field of Gas Arbitration and Price Reviews for long term LNG and Pipeline GSA reopeners having assisted lawyers in preparing the statement of claims and having prepared and defended several expert witness reports in arbitration proceedings.

For more information please contact Steven Taylor at staylor@ekonsc.com or +34 629 679 283.

