



ECONOMIC AND FINANCIAL CONSULTING: INTERNATIONAL ARBITRATION

CRITICAL THINKING AT THE CRITICAL TIME™



Table of Contents

1	ECONOMIC AND FINANCIAL CONSULTING: INTERNATIONAL ARBITRATION
2	DAMAGES ASSESSMENT AND EXPERT TESTIMONY – WHAT WE DO
3	THE FTI DIFFERENCE
4	SUCCESS STORIES – HOW WE DO IT : INVESTMENT TREATY CLAIM – CONSTRUCTION
5	COMMERCIAL ARBITRATION – PETROCHEMICALS INDUSTRY
6	COMMERCIAL ARBITRATION – ENERGY INDUSTRY
7	COMMERCIAL CLAIM AGAINST STATE AGENCY – MINING
8	COMMERCIAL ARBITRATION – ENERGY INDUSTRY
9	COMMERCIAL ARBITRATION – TELECOMS

Economic And Financial Consulting: International Arbitration

Questions of accountancy, economics, finance or valuation often arise in the resolution of international disputes. The number and scale of such disputes is growing, and so too is the complexity of associated evidential, valuation and damages issues. More than ever, providing robust analysis and clear communication to tribunals is essential for a successful outcome.

• FTI Consulting offices



ABOUT US

FTI Consulting is a global business advisory firm dedicated to helping organisations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. With more than 4,000 employees located in 24 countries on six continents, we work closely with clients to anticipate, illuminate and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management, strategic communications and restructuring.

OUR TRACK RECORD

Our economic and financial consulting practice is a leading provider of services to law firms, businesses, investors and governments in the areas of valuation, finance, economics, forensic accountancy, investigations and regulation. Our experts provide independent advice and expert testimony on damages and related issues at each stage of the dispute resolution process.

OUR TEAM

Our highly-credentialed international arbitration team comprises the largest recognised group of testifying experts of any firm. Our experts have extensive experience in damages quantification and related services and are supported by a dedicated team of professionals, industry specialists and emerging experts.

As a result we understand the complex business and regulatory issues facing our clients and can bring a depth of knowledge and analytical rigour to our work that few organisations are able to match.

Damages Assessment And Expert Testimony – What We Do



The FTI Consulting International Arbitration team works with a global client base across all industries from offices around the world including London, Dubai, New York, Paris, Singapore, Toronto and Washington DC.

DAMAGES ASSESSMENT BEFORE ALL MAJOR FORUMS

We regularly provide oral and written expert evidence on damages quantification and regulatory issues in commercial and investment treaty arbitrations, heard before tribunals worldwide.

We have provided testimony before tribunals constituted by:

- AAA
- DIAC
- HKIAC
- ICC
- ICSID
- Iran - US Claims Tribunal
- LCIA
- PAC
- PCA
- SCC
- SIAC
- UNCITRAL

SUPPORT ACROSS THE DISPUTE RESOLUTION PROCESS

Our team has extensive experience in bringing economic and financial expertise to bear in assisting clients and tribunals.

Our services include:

- Providing an initial assessment of the potential value of damages claims and associated issues
- Preparing detailed assessments and analyses of economic loss for the purposes of producing claims and counterclaims
- Performing detailed critiques of other expert reports
- Assessing damage mitigation issues
- Assisting clients with disclosure and document identification for document requests
- Preparing expert reports
- Providing oral testimony at hearings
- Assisting with other hearing and post-hearing activities

The FTI Difference



FTI CONSULTING UPHOLDS ITS REPUTATION FOR EXCELLENCE with an impressive 28 listings in this edition, 11 of whom come from its subsidiary, Compass Lexecon.



— The International Who's Who of Commercial Arbitration 2014

EXTENSIVE TECHNICAL SKILLS

The members of the International Arbitration team at FTI Consulting possess a wide range of skills, experience and qualifications including in accountancy, economics, finance, valuation, statistics and strategic business analysis. Many of our experts have held senior-level positions with leading accounting firms, government regulatory bodies or private sector companies across a range of industries.

INDUSTRY EXPERTISE

We work across a wide range of industries, with particular expertise and experience in energy, extractive industries, petrochemicals, banking and financial services, construction, pharmaceuticals, retail and telecommunications.

CLEAR COMMUNICATION

Our experts provide clear and concise reports and independent expert testimony. We understand the importance of clear communication to the parties and the tribunal with the relevant issues carefully framed and explained.

We regularly collaborate with law firms and associated foundations, helping legal practitioners develop their advocacy expertise, by designing and delivering bespoke advocacy training in the examination of experts. We make our experts available for oral examination in such training sessions.

Our experts have extensive experience in international arbitration across a variety of industry sectors including:

- Construction
- Consumer goods
- Financial services
- Intellectual property
- Manufacturing
- Media
- Mining
- Oil and gas
- Pharmaceuticals
- Technology
- Telecommunications
- Transportation
- Utilities

Success Stories – How We Do It

The FTI Consulting International Arbitration team offers clients a wealth of experience in the quantification of economic and financial damages, business valuation and expert testimony.

From our offices around the world, our experts have been called on to work on assignments across a broad spectrum of industries and in all key jurisdictions. The following case studies highlight a small selection of our work in construction, petrochemicals, energy, mining, telecoms and a commercial claim against a state agency.

Investment Treaty Claim – Construction



THE CHALLENGE

A US based investor made an investment in a large, complex, mixed-use real estate development in the Middle East.

The Host state was alleged to have interfered with the Investor's ability to continue with the development of the property. FTI Consulting was engaged by the Investor's (Claimant) counsel to determine the economic impact of the loss of the ability to develop the property.

THE APPROACH

FTI Consulting developed a team of experts both with respect to construction and valuation issues, and prepared a detailed valuation report, which assumed the project had been completed as planned.

Issues complicating the valuation included the unique nature of the planned property, the volatile market conditions during the period (c. 2008)

and the lack of transparency in market transactions in the region.

Through site visits and use of "on the ground" personnel, our team was able to collect sufficient information to prepare an expert report based on the three core approaches to valuation.

Commercial Arbitration – Petrochemicals Industry

THE CHALLENGE

In late 2008, a major US diversified chemical company and a Middle Eastern government agreed to form a joint venture, with a total enterprise value of around US \$15.5 billion. The US company expected to contribute operating assets to the venture, in exchange for a cash contribution from the Middle Eastern government.

However, after signing the joint venture formation agreement, the Middle Eastern government withdrew from the transaction. The US chemical company claimed that it had incurred losses due to the collapse of the deal.

It alleged it was disadvantaged by:

- Increased finance costs relating to a funding gap created by the collapse of the deal. The US chemical company was pre-committed to a significant acquisition to be funded by proceeds from the creation of the joint venture
- Wasted and incremental expenditure associated with the joint venture and other commitments
- The forced disposal of assets
- A loss of bargain inherent in the purchase price of the US chemical company's assets

FTI Consulting was appointed by counsel to act as independent expert to the US chemical company to estimate the losses incurred as a consequence of the Middle Eastern government's failure to fulfil the terms of the joint venture formation agreement.

THE APPROACH

Using an FTI team comprising accountants, economists and industry specialists, we valued the losses incurred by the US chemical company.

Increased financing costs suffered by the US chemical company were, in part, dependent on its credit rating.

We constructed a detailed financial model to assess how the collapse of the joint venture affected the US chemical company's credit rating. From this, our team was able to calculate the increased cost of finance associated with the deal's failure for a number of different debt instruments. FTI Consulting also calculated incremental costs and fees associated with equity and debt issuances.

Furthermore, the US chemical company suffered a number of incremental wasted costs related to the failed joint venture and litigation that arose as a result of the company being unable to finance pre-existing commitments. FTI Consulting accountants reviewed a large number of accounting vouchers and other associated documentation to verify wasted costs or those that arose as a result of the failure of the joint venture to reach completion.

To calculate the losses associated with the forced disposal of assets, our experts performed a number of valuations of basic and specialty chemical assets to determine whether the "fire sale" prices the US chemical company was able to achieve during the global financial crisis for these assets was less than their value in use. Our experts also identified and



valued lost synergies as a result of the company having to sell assets separately, and wasted capital expenditure.

To establish a loss of bargain, our team used detailed econometric analysis of the responsiveness of chemical prices to changes in input costs to value the joint venture at both the date of the formation agreement and at the date that the Middle Eastern government withdrew from the deal. The change in valuation between these dates also took into account the onset of the global financial crisis and the commodity chemical cycle.

To tackle this complex problem, we combined in-house chemicals expertise with economic and financial analysis skills. The financial analysis included a review of changes to the chemical company's costs of capital and development of a detailed plant-level model of the joint venture's expected performance.

Commercial Arbitration – Energy Industry



THE CHALLENGE

FTI Consulting was engaged on behalf of an Eastern European project development company, its owners, and their associates (“Claimants”) operating a series of oil and gas concessions in an Eastern European jurisdiction. Working through operating subsidiaries, the Claimants in this case signed subsoil use contracts with the State (“Respondent”) in 1997 for the exploration and extraction of hydrocarbons over a number of fields. Exploration, development, and production at the fields began in 2000 and continued up to the date of the alleged taking by the Respondent. The Claimants also began construction of a liquefied petroleum gas (“LPG”) processing plant in 2006.

The Claimants alleged that beginning in October 2008, the Respondent initiated a series of actions including: 1) conducting unjustified criminal prosecution of the Claimants’ employees; 2) levying unjust tax and criminal fines; 3) conducting unwarranted tax and State-agency audits; 4) freezing bank accounts; and 5) ignoring pre-existing agreements between the Claimants’ operating subsidiaries and the State. These actions culminated in the cancellation of the subsoil use agreements in July 2010.

As a result of these actions, the Claimants initiated arbitration proceedings at the Arbitration Institute of the Stockholm Chamber of Commerce alleging that the Respondent’s actions from October 2008 constituted an unlawful, indirect expropriation and that the July 2010 taking was an unlawful, direct expropriation.

The mandate of FTI Consulting was to quantify the value of the assets that were taken as a result of the alleged actions of the Respondent.

THE APPROACH

FTI Consulting assembled a team experienced in the valuation of oil and gas projects consisting of members from its Canadian, US, and UK offices. Working in conjunction with the petroleum engineering firm engaged by the Claimants, the FTI Consulting

team traveled to the Claimants’ offices in Eastern Europe to examine raw financial and technical data in order to assist in the creation of detailed financial models for the project’s producing oil and gas fields.

At the time of the taking, the Claimants’ LPG plant was still under construction and a number of its fields had not yet reached the production stage, although significant investments had already been made on both fronts. In consultation with the Claimants’ petroleum engineering experts, FTI Consulting created a number of financial models around potential development scenarios for the tribunal’s benefit in order to contextualise the quantum of damages that may be owed to the Claimants’ as a result of the alleged actions of the Respondent. The creation of these financial models required the analysis of the local and international natural gas

market, design documents for the LPG plant, and technical reports prepared by the Claimants’ petroleum engineering experts.

Additionally, immediately preceding the commencement of the alleged actions of the Respondent, the Claimants exposed its entire suite of oil and gas assets to sale. As part of its analysis, FTI Consulting examined the bid documents proffered by potential buyers, as well as reports and presentations made by the Respondent’s investment advisors during the sale process.

FTI Consulting provided a comprehensive analysis to the tribunal including an overview of the assets that were allegedly taken by the Respondent and the economic damage done to the Claimants as a result of the actions.

Commercial Claim Against State Agency – Mining

THE CHALLENGE

FTI Consulting was engaged by a junior copper exploration company in the context of an arbitration pertaining to the company's multi-million dollar investment into early stage copper deposits and exploration properties in a host country in South America. At the time, one of the company's deposits ranked as one of the largest greenfield copper resources in the world. Upon raising financing on the Toronto Stock Exchange, the company invested substantially all of its funds into the development of the deposits and properties.

Subsequent to the investment, the host country revoked the concessions, causing the loss of company's investment and subsequent delisting from the stock exchange.

THE APPROACH

FTI Consulting quantified the damages sustained on the basis of the fair market value of the company's mineral properties immediately prior to the nullification of the concessions of the company's major resource property. The fair market value was determined in accordance with various global mining codes on the basis of three widely-used market approaches, including trailing stock price trading data, implied value from previous public offerings, and implied value from transactions for similar minerals assets. FTI Consulting also presented an alternative calculation of the damages to the company based on the actual costs incurred to develop the mineral properties.

The team of independent experts produced a comprehensive valuation report and provided expert testimony in front of the arbitral tribunal.



Commercial Arbitration – Energy Industry



THE CHALLENGE

FTI Consulting was engaged by a major natural gas exporter in the context of international arbitration relating to a long-term natural gas supply contract with a leading European supplier. The supplier was seeking to alter the terms of contracts worth over €30bn based on perceived changes in conditions in the European natural gas market.

FTI Consulting was engaged by the exporter's legal counsel to assess the extent of recent changes in the European natural gas market as well as their foreseeability at the time of the contract's signing. Further, FTI was asked to evaluate the likely impact of proposed changes to the contract's commercial terms.

THE APPROACH

Calling on the skills of in-house industry experts, as well as financial analysts specialising in the commodities markets, our economists delivered to the arbitration tribunal a comprehensive report of regulatory, commercial, financial and macro-economic developments in the European natural gas market over the past two decades.

Performing detailed quantitative analysis of the historical relationships between spot and forward prices of natural gas and related commodities, our experts determined the timing as well as the foreseeability of the alleged market changes. Based on the results of this analysis, our professionals were able to assess the extent to which these changes should have been foreseeable by the importer at the time of the contract's signing.

Drawing upon publicly available statistical data, our team also undertook a detailed analysis of the pricing of comparable import contracts across the European Union in order to evaluate whether the terms of the contract in question were in line with the rest of the market.

To determine the likely impact of proposed changes to the contract's commercial terms, the FTI Consulting professionals examined whether the proposed changes would distort the balance of risk and return inherent in the original contract. Using their expertise in fields such as option pricing and the physical properties of natural gas storage systems, our team provided the tribunal with a detailed assessment of the likely economic impact of the proposed modification of the contractual framework.

Commercial Arbitration – Telecoms

THE CHALLENGE

A large telecommunications and media group sold its shares in two telecommunications operators located in Russia, with cash comprising the bulk of the purchase consideration. Due to a difference between the transacting parties' valuations of the shares, the purchaser agreed to transfer to the vendor a Licence that would confer the right to operate and develop a phone network in a major Russian city.

Several years after the deal, the vendor alleged that the purchaser had failed to transfer the licence and certain equipment, thus frustrating the vendor's ability to assume control of and develop the network.

FTI Consulting was appointed as independent expert by the Respondents to review the Claimant's assessment of its loss, which was based on its expert valuation of the network, had it been developed in line with the Claimant's business plan.

THE APPROACH

FTI Consulting assembled specialists from its dedicated international arbitration and communications, media and telecommunications practices. By involving both telecoms and general damages experts, we were able to identify and analyse the technical issues surrounding the licence and associated technology, as well as focus on the parameters, assumptions and methodology used by the Claimant's expert in his valuation model.

Our telecoms industry experts quickly identified a number of fundamental issues related to the phone network under consideration. Firstly, it was apparent that the network, which would have been based on near-obsolete technology, had never operated on a commercial basis and had no commercial customers. Moreover, research into the existing offering in the city concerned revealed that the network proposed would not have been competitive because of high levels of GSM and wired fixed line penetration.

Furthermore, in order to provide the data services the Claimant planned, it would have required an additional two licences, which the Claimant could not be certain would have been granted. Finally, we noted that the frequency spectrum would have been insufficient for the Claimant to have offered mass high-speed data service as it had intended.

Using a process of "reverse engineering", our valuation experts were able to re-create the discounted cash flow (DCF) valuation model the Claimant relied on, thus enabling us to understand how the different revenues and cost assumptions affected the ultimate valuation. We determined that certain assumptions, including the assumed revenue per subscriber and numbers of subscribers, were unrealistically high when compared with relevant benchmarks and published economic data. We concluded that adjusting certain key assumptions by only a small amount in order to make them more realistic would have led to the DCF model producing a much-reduced valuation.





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About FTI Consulting

FTI Consulting is a global business advisory firm dedicated to helping organisations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. FTI Consulting professionals, who are located in all major business centres throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management and restructuring.

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