

Impact of the Russian-Ukrainian Conflict on the Global Gas Market and Solutions for the Way Forward

An aerial view of an offshore oil rig at sunset. The rig is illuminated with warm yellow lights, and the sky is a mix of orange, red, and blue. The rig's structure is complex, with many levels and pipes. A flare stack is visible on the right side of the rig, with a flame at the top. The water is dark, and the overall scene is dramatic and industrial.

In recent weeks, international and national sanctions and volatile price and demand fluctuations and movements in the global gas markets have started to impact and disrupt the operation of certain long-term LNG and pipe gas contracts in markets around the world.

These events come hot on the heels of a disruptive 18-month period for global LNG markets, which have had to absorb the impact of the COVID-19 outbreak and extreme price volatility to unprecedented levels. Buyers and sellers alike should brace themselves for potential requests for good faith price and volume discussions in the near future.

Commercial LNG and gas supply managers will be familiar with these issues; we identify here various options available to address the present challenges faced in the current market environment.

These tools can provide leverage to parties negotiating price and volume issues in today's market and can be called upon as options to mitigate exposure in portfolios and to avoid the threat of breach flowing from the new wave of sanctions and measures interfering with performance.

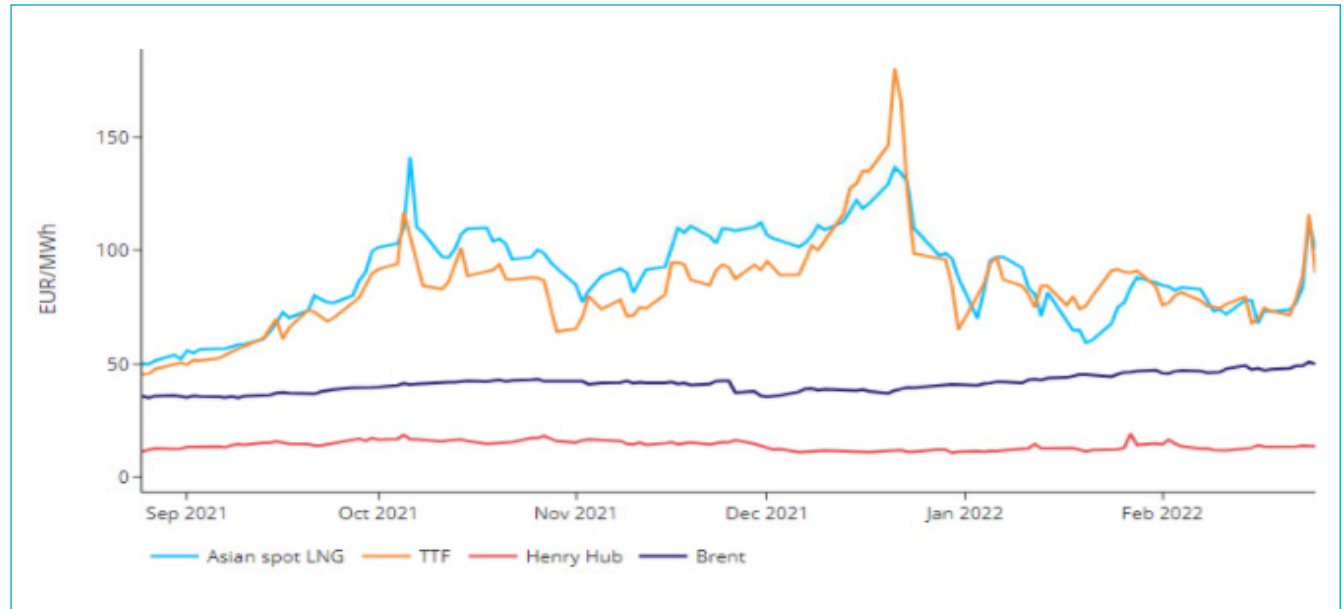


Rising Gas Prices in Europe Raise Concerns for Buyers Worldwide

Since H2 2021, European gas prices have risen significantly. Now, with the advent of the Russian-Ukrainian conflict, the current market environment in the global gas market has changed precipitously. Parties are dealing with:

- Concerns of supply reductions
- The impact of sanctions
- Rising gas prices
- Arbitrage of LNG cargoes between Europe and Asia

With recent events, European gas prices have spiked, raising issues for European and Asian buyers. The question remains as to whether LNG cargoes will head to Europe rather than Asia.



Source: European Gas Hub at <https://www.europeangashub.com/rising-prices-and-volatility-after-the-invasion-of-ukraine.html>.



Potential Currency Issues

Russia's President Vladimir Putin recently announced that Russia will continue exporting gas under previously concluded contracts, but that such exports to "unfriendly countries" will change their payment currency to Russian rubles.

Buyers should consider whether their long-term contracts for Russian gas:

- Specify in which currency the contract price is to be calculated
- Stipulate in which currency invoices are to be issued and/or payments are to be made
- Provide for disputed invoices to be paid during the pendency of a dispute
- Allow the buyer to issue its own invoice if the seller's invoice does not comply with contractual invoicing provisions
- Define what constitutes payment under the contract, and consider what country the seller's designated bank to receive payments is located
- Require amendments to the contract to be made-- in writing, signed by both parties?
- Have price review provisions that would encompass a change to the currency in which the contract price is calculated -- and, if so, whether contractual requirements for a price revision are fulfilled
- Provide for how exchange rate and currency risk is to be addressed if contractual currency changes
- Would address such situation under the force majeure clause
- Address consequences for both parties with regard to supply disruptions



Now more than ever, parties to long-term gas supply contracts need to maintain a solid grasp of the contractual tools at their disposal. A strong understanding of the contract is a good platform for dialogue between the parties on how to address the present crisis.

In today's extremely volatile gas markets, we are actively advising market participants in Europe and Asia on a day-to-day basis on:

- Price review strategy development, negotiations and arbitrations
- Hardship and change of circumstances negotiations and arbitrations
- *Force majeure* claims and defenses
- Missed cargo and underdelivery disputes
- Portfolio review and optimization to assess volume and destination flexibility tolerances

Buyers and sellers in the market are facing these issues now, and will continue to do so going forward. A firm understanding of the available options is vital in times when the sands in the global gas market are constantly shifting.

Solutions for the Way Forward

Price Review Strategy Development, Negotiations and Arbitration

We have been continuously involved in price review negotiations and arbitrations since the very first price review arbitration in Europe two decades ago.

We are advising on:

- How recent market events might impact claims for price increases brought by sellers
- What other options might be available for relief, depending on the governing law of the contract
- Numerous long-term LNG contract portfolio reviews in Asia to determine where value can be obtained across portfolios
- Price review negotiation strategy development based on the long-term relationship involved, counterparty negotiation style and the local market intelligence

We have negotiated and prevailed in price reviews for European and Asian pipeline and LNG buyers against various sellers in Europe, Australia, Indonesia and Qatar.

Force Majeure Claims and Defenses

We are advising on issues of *force majeure* related to, among other things:

- *Force majeure* declarations made in connection with undelivered or underdelivered quantities
- Ability to effect payments for volumes coming from Russian-related suppliers
- Applicability of *force majeure* provisions
- Handling contested declarations
- Mitigation measures

The validity of a *force majeure* declaration will depend significantly on the:

- Language of the relevant clause of the contract
- The existence of the event relied on within the clause
- Whether performance has been prevented, hindered or delayed in line with the language of the contract and the applicable law
- Compliance with other elements of the clause, such as notice requirements and any mitigation measures



Solutions for the Way Forward

Missed Cargoes and Underdelivery Disputes

Significant spot price fluctuation has raised issues with regard to missed cargo shipments or partial loadings that are then not subsequently rescheduled in the full cargo lot. This impacts reliability and certainty of supply for buyers and undermines the contractual bargain.

We have been advising on:

- Tracking shortfalls and underdeliveries against market price
- The stated basis for underdelivery relative to the contract
- Remedies available for underdelivery, including the impact of any liquidated damages and any wilful default/misconduct provisions

We advised a leading Asian LNG buyer in a major arbitration against an Asian seller, where the sellers had failed to deliver multiple LNG cargoes. We achieved success for our client, including scheduling for redelivery of all missed cargoes and damages.

Hardship and Change of Circumstances Negotiations/Claims

Hardship or change of circumstances clauses can also sometimes be used to negotiate and/or achieve better terms.

These clauses typically allow or oblige parties to meet and seek to agree on modifications to contractual terms where unforeseen events have occurred that have fundamentally altered the existing commercial bargain.

We have been advising on:

- Change of circumstances and hardship provisions
- How best to deploy them
- Establishing hardship
- Remedies

These provisions can open negotiations with the possibility of reaching a mutual agreement.

Portfolio Review and Optimization

In times of uncertainty like the present, market participants are well advised to familiarize themselves closely with their portfolio contracts in order to gain a better understanding of how they can provide solutions to address periods of difficulty. We have been advising on:

- Whether contracts afford sufficient upward or downward quantity tolerance
- How diversion rights can be balanced in a portfolio
- Acceleration of previously paid for (but not taken) deferred cargoes
- Optimizing make-good LNG to fill in supply gaps



We Are Among the World's Leading Law Firms in Natural Gas and LNG Disputes

- 20 years of experience
- 69 disputes
- In both Asian and European markets
- 21 lawyers
- Based in Europe, the US and Asia

In June 2013, *The American Lawyer Arbitration Scorecard* published its list of the 20 Largest International Commercial Awards ever captured by that publication (dating back to 2001), and we represented the winning party in three of them – no other law firm had more than two.

All three of our victories on the list were price review proceedings:

- A US\$4 billion UNCITRAL award in which we represented a European buyer in a gas pricing dispute arbitration against an African seller in 2005.
- A US\$6 billion UNCITRAL award in which we represented a European buyer in a gas pricing dispute arbitration against a Caribbean seller in 2008.
- A US\$580 million ICC award in which we represented a European buyer in a gas pricing dispute arbitration against a Middle Eastern seller in 2012.
- Most recently, in September 2021, our team secured another major multimillion-dollar ICC award representing a European buyer in a gas pricing dispute against a Middle Eastern seller.



Preeminent Industry Publications Recognise Our Lawyers Among the World's Leaders in International Arbitration

IDR Group of the Year



International Arbitration Practice of the Year

In 2020, *Law360* selected us as International Arbitration Practice of the Year out of 800 other applicants.



Our Significant Experience in LNG and Pipeline Gas Cases

No.	Buyer	Seller	Product	Process	Arbitration Rules	Seat/Applicable Law
1	Asian buyer	Australian seller	LNG	Negotiation	LCIA	Singapore/English law
2	Asian buyer	Australian seller	LNG	Negotiation	LCIA	Singapore/English law
3	Asian buyer	Indonesian seller	LNG	Negotiation	ICC	Singapore/English law
4	Asian buyer	Australian seller	LNG	Negotiation	LCIA	Singapore/English law
5	Asian buyer	Australian seller	LNG	Negotiation	ICC	Singapore/English law
6	Chinese buyer	Australian seller	LNG	Negotiation	ICC	Singapore/English law
7	Chinese buyer	Australian seller	LNG	Negotiation	UNCITRAL	Hong Kong/English law
8	Chinese buyer	Australian seller	LNG	Arbitration	UNCITRAL	Hong Kong/English law
9	Chinese buyer	Australian seller	LNG	Negotiation	UNCITRAL	Hong Kong/English law
10	Chinese buyer	Indonesian seller	LNG	Arbitration	SIAC	Singapore/English law
11	Indian buyer	Seller in the Americas	LNG	Negotiation	ICC	New York/New York law
12	Indian buyer	MENA seller	LNG	Negotiation	ICC	New York/New York law
13	Asian buyer	Australian seller	LNG	Negotiation	LCIA	Singapore/English law
14	Asian buyer	Asian seller	LNG	Negotiation	SIAC	Singapore/English law
15	Chinese buyer	Asian seller	LNG	Arbitration	ICC	Singapore/English law
16	Asian buyer	Indonesian seller	LNG	Negotiation	ICC	Singapore/English law
17	European buyer	MENA seller	Pipeline gas	Arbitration	ICC	Paris/Algerian law
18	European buyer	MENA seller	Pipeline gas	Negotiation	ICC	Geneva/Algerian law
19	European buyer	MENA seller	LNG	Arbitration	ICC	London/English law
20	European buyer	MENA seller	Pipeline gas	Negotiation	ICC	Vienna/English law
21	European buyer	MENA seller	LNG	Arbitration	ICC	New York/New York law
22	European buyers	MENA seller	LNG	Arbitration	ICC	Geneva/New York law
23	European buyer	MENA seller	LNG	Arbitration	UNCITRAL	London/English law
24	European buyer	MENA seller	LNG	Arbitration	ICC	London/English law
25	European buyer	MENA seller	Pipeline gas	Arbitration	UNCITRAL	Geneva/English law
26	European buyer	MENA seller	LNG	Arbitration	UNCITRAL	London/English law
27	European buyer	MENA seller	LNG	Arbitration	UNCITRAL	Geneva/English law
28	European buyers	MENA seller	LNG	Arbitration	UNCITRAL	London/English law
29	European buyer	MENA seller	LNG	Arbitration	UNCITRAL	Geneva/English law
30	European buyer	European sellers	LNG	Negotiation	ICC	Lausanne/Norwegian law
31	European buyer	European seller	Pipeline gas	Arbitration	Ad hoc	Copenhagen/Danish law
32	European buyer	European seller	Pipeline gas	Negotiation	ICC	Geneva/Swiss law
33	European buyer	European seller	Pipeline gas	Negotiation	ICC	London/English law
34	European buyer	Russian seller	Pipeline gas	Negotiation	ICC	Vienna/Austrian law
35	European buyer	European seller	Pipeline gas	Negotiation	ICC	Zurich/Austrian law

No.	Buyer	Seller	Product	Process	Arbitration Rules	Seat/Applicable Law
36	European buyer	European sellers	LNG	Negotiation	ICC	Lausanne/Norwegian law
37	European buyer	Russian seller	Pipeline gas	Arbitration	SCC	Stockholm/Swedish law
38	European buyer	Seller in the Americas	LNG	Arbitration	UNCITRAL	New York/New York law
39	European buyer	Seller in the Americas	LNG	Arbitration	UNCITRAL	New York/New York law
40	European buyer	Seller in the Americas	LNG	Arbitration	UNCITRAL	New York/New York law
41	European buyer	Russian seller	Pipeline gas	Negotiation	ICC	Austria/German law
42	European buyer	Asian seller	LNG	Negotiation	ICC	New York/New York law
43	European buyer	MENA seller	LNG	Arbitration	ICC	London/English law
44	European buyer	Russian seller	Pipeline gas	Negotiation	Ad Hoc	Sweden/Swedish law
45	European buyer	MENA seller	LNG	Negotiation	UNCITRAL	Geneva/English law
46	European buyer	European seller	Pipeline gas	Negotiation	ICC	Vienna/Austrian law
47	European buyer	MENA seller	LNG	Arbitration	ICC	London/English law
48	European buyer	Seller in the Americas	LNG	Arbitration	UNCITRAL	New York/New York law
49	European buyer	European seller	LNG	Arbitration	ICC	Geneva/English law
50	European buyer	Russian seller	Pipeline gas	Negotiation	ICC	Vienna/Austrian law
51	European buyer	European seller	Pipeline gas	Negotiation	ICC	Vienna/Austrian law
52	European buyer	MENA seller	Pipeline gas	Arbitration	ICC	Vienna/Austrian law
53	European buyer	Russian seller	Pipeline gas	Arbitration	ICC	Vienna/Austrian law
54	European buyer	MENA seller	Pipeline gas	Arbitration	ICC	Geneva/Algerian law
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58	European buyer	European seller	Pipeline gas	Negotiation	Ad hoc	Stockholm/Swedish law
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60	European buyer	European seller	Pipeline gas	Negotiation	Ad hoc	Stockholm/Swedish law
61	European buyer	European seller	Pipeline gas	Negotiation	ICC	Vienna/Austrian law
62	European buyer	European seller	Pipeline gas	Arbitration	ICC	Geneva/Swiss law
63	MENA buyer	European seller	Pipeline gas	Arbitration	Ad hoc	Stockholm/Swedish law
64	MENA buyer	European seller	Pipeline gas	Arbitration	UNCITRAL	Stockholm/Swedish law
65	MENA buyer	European seller	Pipeline gas	Arbitration	UNCITRAL	Stockholm/Swedish law
66	MENA buyer	European seller	Pipeline gas	Arbitration	SCC	Stockholm/Swedish law
67	MENA buyer	European seller	Pipeline gas	Arbitration	SCC	Stockholm/Swedish law
68	MENA buyer	European seller	Pipeline gas	Arbitration	SCC	Stockholm/Swedish law
69	European buyer	MENA seller	LNG	Arbitration	ICC	London/New York law

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Please do not hesitate to reach out to us to discuss any issues you are currently facing in your portfolio



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