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THE VALUATION OF ENERGY ASSETS IN TIMES OF WAR-LIKE CONFLICTS

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The Valuation of Energy Assets in Times of War-Like Conflicts

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BRG

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Introduction

The geopolitical and economic fallout from Russia's war in Ukraine has included sanctions and counter-sanctions between Western countries and coalitions and Russia, affecting the energy sector and influencing the valuation of energy assets across Europe and globally. Sanctions have triggered energy price volatility and disrupted supply and demand dynamics – factors that directly affect the profitability of energy companies. In parallel, Western sovereign states have intervened in the operations of domestic subsidiaries of Russian entities, disrupting control, operations and financial performance. In response, Russia has enacted special economic measures, including ordering forced divestitures and takeovers of Western energy companies operating within its borders.

These state actions are giving rise to claims by energy companies and investors against sovereign states. Consequently, practitioners will seek to assess damages arising from alleged treaty breaches against a backdrop of sanctions, expropriations and discriminatory and unfair treatments affecting the value of protected investments. For valuation purposes, this raises the critical question of whether – and how – factors such as price volatility, supply constraints, economic measures and uncertainty should be incorporated into the counterfactual scenario, given that causality not only might be triggered by the respondent's actions and the alleged breach itself, but also may be affected by the elevated risk observed during war and war-like conflicts. This question will need to be assessed on a case-by-case basis.

Of course, this is not the first time that claims have arisen in the context of significant war-like conflicts. Practitioners can draw valuable insights from past claims and tribunal decisions in situations of war, revolution and generalised economic upheaval.

In this chapter, we provide a summary of sanctions and interventions to date affecting companies in the energy sector, with a focus on European assets, given that Europe has been more directly affected by supply disruptions, asset freezes, divestitures, sanctions and counter-sanctions. This overview is not intended to be exhaustive, but rather to set the stage for the following section. Subsequently, we examine the implications for practitioners valuing energy assets in this context, drawing lessons from past tribunal rulings.

Sanctions and restrictions on ownership in the aftermath of Russia's invasion of Ukraine

Sanctions imposed by Western countries and coalitions, along with Russia's countermeasures, have disrupted natural gas supply and transportation contracts, reshaping the global energy market. The EU and G7 have implemented multiple sanctions targeting Russian oil and other energy products. For instance, the EU banned the import of seaborne crude oil and refined petroleum products from Russia – commodities that accounted for approximately half of Russia's total oil exports (€71 billion in 2021).[2] Additionally, the G7 introduced price caps aimed at reducing Russia's oil revenues and contributing to the stabilisation of global energy markets.

In response, Russia enacted counter-sanctions, including a government prohibition of Russian companies and traders from selling oil to any country or company participating in the price cap.[3] To circumvent price caps, Russia has utilised a shadow fleet of tankers and vessels that conceal the identities of their beneficial owners.

The price of fossil fuels has risen significantly since late 2021, with natural gas reaching all-time highs during 2022 and 2023. The positive price shock began to fade in late 2024 and early 2025, but ongoing volatility has persisted.[4]

Consequently, the EU has reduced its dependence on Russian gas; Russia's share of the EU's total gas demand decreased from an average of over 40 per cent between 2018 and 2021 to 14 per cent in 2024.[5] On the demand side, the EU observed a decrease in overall gas demand between 2022 and 2024, driven by lower usage from households and industry, as well as an increase in energy generation from renewable sources, such as solar and wind. In May 2022, for the first time, more electricity in Europe was generated from wind and solar power than from fossil fuels.[6]

Sanctions have affected the profitability and operations of energy companies across Russia and the West. For example, the reduction in Russian natural gas volumes has severely affected downstream companies in the EU. To fulfil its long-term obligations in the face of constrained supply from Russia, Uniper was forced to purchase gas from market sources at significantly higher prices; the company was eventually rescued and nationalised by the German government.[7] Similarly, Germany nationalised Gazprom Germany, the local subsidiary of a Russian entity, in a context of not just restricted supply of natural gas from Russian origin but also banking restrictions due to Russian control and ownership.[8]

In addition, Western countries have intervened in the operations of local Russian subsidiaries by freezing assets, forcing divestitures or nationalisation, as in the case of Gazprom Germany. The German government also took control of Rosneft's stake in three refineries under a trusteeship, which maintains Rosneft as the legal owner but impedes its control.[9] In Bulgaria, a refinery owned by the Russian company Lukoil faced restrictions on Russian crude imports, restrictions on exports of products refined from Russian crude, and a tax imposed on the refinery's products. Lukoil is reportedly seeking to sell the refinery.[10]

Russia, on the other hand, has ordered the divestiture or takeover of Western energy companies and Western-held assets operating in Russia. Affected European companies include Wintershall Dea, whose stake in its upstream oil and gas asset was to change hands to Russian companies. Likewise, Moscow took control of the power generation assets of Unipro, the Russian division of German utility company Uniper, and a similar action was taken against the power generation assets, including renewable assets, owned by the Russian division of Finnish company Fortum.[11] Russia has also implemented special economic measures, including financial restrictions such as freezing funds and halting dividend payments to shareholders from sanctioned countries. Since August 2022, Russia has also required government clearance on transactions related to foreign investments.[12] As of March 2023, Russia mandated that its government could take over the operations of companies that failed to meet state defence contracts under martial law conditions.[13]

Consequently, many Western companies were forced or pressured to sell their interests, cede control over Russian assets, or otherwise impair these investments.[14] The affected investments include upstream projects, LNG projects, downstream retail and lubricants businesses, among many others. The war in Ukraine and the resulting sanctions have drastically altered the risk profile of holding assets in Russia for Western stakeholders; ownership of assets in Russia has become financially and legally riskier due to the threat of takeover, as well as Russia's capital controls, restricted dividend repatriation and the requirement of prior government approval for asset sales, all of which obstruct operations and profitability. Moreover, companies that continue to operate in Russia may face secondary sanctions from Western countries or reputational damage.

Implications for valuation experts

The sanctions, state interventions and general conflict in Europe have affected the value of energy assets. These measures are giving rise to claims by companies and investors against sovereign states. In such cases, practitioners, including legal counsel, valuation experts and tribunals, must contend with the relationship between the alleged breach and any contextual value destruction. From a valuation perspective, this involves determining whether the contextual factors – such as sanctions, market disruptions and regulatory measures – should be incorporated into the but-for scenario and, if so, how they should be treated, or excluded because they are causally linked to the alleged breach itself.

We recommend that the valuator take the following steps:

1. Define the effects that should be captured in the counterfactual scenario. What variables or mechanisms of profitability have been affected by the context of war, sanctions and political turmoil?
2. Consider whether all or some of these contextual impacts are attributable to the respondent and if they can be considered as precursors or otherwise linked to the alleged breach. This step is subject to the legal strategy.
3. Evaluate methods for estimating the affected variables, considering whether the effects are likely to be permanent or temporary, and determine how to address war-like conflict risk (a type of political risk) and accurately estimate the discount rate.
4. Finally, if the case at hand involves the forced sale or divestment of an asset to a restricted pool of buyers, valuators will need to disentangle the effects of an unfavourable environment of sanctions and war, the value destruction caused by a forced sale, and the impact of a constrained set of potential buyers.

Define the counterfactual scenario and affected value drivers

In past decisions, tribunals have determined that a distinction may be necessary between the macroeconomic and political environment and the impact of the measures themselves. Decisions from the US–Iran Claims Tribunal provide useful insights into the separation of a claimed breach and non-protected disruptions, including social and political unrest and war. In *Amoco v. Iran*, the tribunal determined that a valuation must assess the 'legitimate expectations [. . .] taking into account the circumstances prevailing at the time of the taking', which included political turmoil, economic uncertainty and a generally 'hectic environment' attributable to the Iranian religious revolution.[15] Decisions closer to the situation at hand have made similar determinations: in *Ukrnafta v. Russia* the tribunal noted that any willing buyer and willing seller would have borne in mind the present 'turmoil' when valuing an asset in 2014 Crimea.[16] These tribunals decided that claimants should be compensated for the value of the asset, given the context, rather than in the absence that same context. In other words, in those cases, the contextual effects of sanctions and a war-like environment should be reflected in the counterfactual scenario.

Such a hectic environment may directly affect the drivers of profitability and value, including production levels, energy prices, available supply, costs, regulatory and tax regimes, and exposure to risk, among other factors. The valuator should clearly define the variables affected by the context and assess the best way to reflect the effects in the valuation. For instance, consider the case of production levels. In the current context of sanctions, a company with an upstream oil and gas asset in Russia may face significant restrictions on exports, thus limiting the level of sales that can be reasonably expected. Alternatively, a midstream natural gas or electricity company historically dependent on natural gas supplied from Russia may find itself with a debilitating supply constraint, which could result in the inability to satisfy customer demand or the requirement to purchase energy on the market at significantly higher prices.

In the case of a discounted cash flow (DCF) analysis or other income approach method, the valuator must consider whether and how to account for contextual impacts, such as production limitations, in the counterfactual expectations. For example, consider the claim of *Naftogaz v. Russia*, which arose in the aftermath of Russia's invasion of Crimea and the expropriation of the Ukrainian national company's assets. To value the upstream assets, respondent and claimant submitted DCF scenarios with differing counterfactuals. The claimant contended that in the absence of Russia's actions to occupy Crimea, they would have operated under the legal and economic conditions of Ukrainian law, natural gas pricing regulations and tax regimes. Nevertheless, the tribunal majority determined that compensation under the bilateral investment treaty (BIT) was to be based on 'FMV in a hypothetical marketplace' and proceeded to award value to these assets based on the 'Russian scenario' counterfactual, which considered Russian pricing regulations, tax regime and discount rate.[17]

When undertaking a market approach based on comparable public companies, a valuator must define a sample of companies affected by the context but not by the protected measures, which can be a challenging proposition. For instance, under circumstances where the sanctions are not part of the protected measures, such as in the case of European energy assets nationalised or subjected to takeover, the comparable sample should include companies engaged in similar activities within Europe that are subject to similar sanctions and war-related disruptions, so that the market value theoretically reflects the value destruction caused by the context. The company being valued may have characteristics that differentiate it from the comparable companies, so it should be assessed whether these characteristics necessitate any valuation adjustment.

Consider contextual impacts attributable to the respondent

Practitioners should consider whether some of these contextual impacts are attributable to the respondent and if they can be regarded as precursors or otherwise linked to the alleged breach. In some instances, specific war-related measures, such as special economic measures or targeted sanctions, may be attributable to the respondent. For example, in the Lukoil's*Burgas* case, an oil refinery controlled by a Russian company in Bulgaria, practitioners might assess how such a company may have been subject to multiple measures, such as restrictions on the import of crude oil inputs, restrictions on the export of refined products produced from Russian imports, and new tax impositions or other forms of intervention. The expert and counsel may consider which restrictions can be defined as precursors to the protected measure itself. It may be necessary for the valuator to analyse whether there is a causal link between these precursor measures and the asset's observed value destruction.

In *Olin v. Libya*, the tribunal determined that various unlawful actions attributable to the respondent prevented Olin from operating under normal business conditions. The tribunal considered the argument that the Libyan revolution alone created an environment of chaos, thus affecting the investment climate. Still, it ultimately determined that 'these events [Libyan crisis and civil war] do not solely justify Olin's clear underperformance'.[18]

Projecting the value drivers

Once the affected value drivers have been defined and their reflection in the counterfactual scenario duly considered, the valuator must determine how to project or estimate these variables. Practitioners will need to consider whether the relevant contextual effects are likely to be temporary and, if so, how to capture their evolution going forward, which might affect both the counterfactual and the actual scenarios. Additionally, while expectations for some variables may be straightforward to estimate, others may be obscured by heightened levels of uncertainty at the time. Finally, the risk of materialisation of different scenarios can be modelled explicitly or it can be incorporated by way of the discount rate; however, the practitioner must carefully consider what risks are appropriate to include in the discount rate versus the cash flow analysis to avoid double-counting the level of risk.

Consider whether the contextual impacts are likely to be permanent or temporary

In many cases, an environment of war, sanctions and their impact is expected to be temporary and therefore may affect an asset's value during a limited time frame. A knowledgeable investor does not expect war and consequent sanctions to disrupt the European energy stage forever, although it is unknown how long the disruption may last. The expert should consider reasonable, and potentially multiple, timelines for the evolution of sanctions such as the prohibitions on production, imports and exports of energy products, price caps, banking restrictions, as well as an eventual wind-down of the conflict over time.

In *Smurfit v. Venezuela*, for instance, the claimant linked future sales to the expected recovery of Venezuela's GDP and divided its forecast into two separate phases: (1) 2018–2023, marking an expected decline in the GDP, and (2) 2024–2033, projecting an expected recovery period, using Zimbabwe's post-crisis trajectory as a benchmark. The respondent, however, argued that Venezuela's recovery would more closely mirror that of Tajikistan or Ukraine. The tribunal accepted the two-phase structure and acknowledged the Zimbabwe crisis as a sufficiently 'precise reference', based on analysis of the similarities and differences of the crises provided by both sets of experts.[19] Ultimately, the tribunal decoupled the recovery of sales as a 'natural consequence' of the GDP recovery. Therefore, while it may be helpful to project timelines for economic recovery or the evolution of sanctions, experts should be sure to consider the relationship and probable scenarios for the specific drivers that determine the asset's value; for example, as recommended by the tribunal in *Phillips v. Iran* to forecast oil prices (discussed below).

In the 'Russian scenario' counterfactual ultimately relied on by the tribunal in *Naftogaz v. Russia*, the claimants projected specific drivers of the DCF model based on the transition of the Crimean territory from Ukrainian to Russian control.[20] Accordingly, specific variables, such as natural gas prices, were initially projected based on the Ukrainian regulated regime for 2014 (year during which Crimea remained under Ukrainian sovereignty), transitioning to Russian regulated prices as of 2015, with export parity expected to be achieved two years later. Fiscal terms were projected based on a similar transitional approach.[21]

Dealing with unknown outcomes

While the impact of sanctions and war-related measures may be observable and measurable for some variables or in some cases, in other cases, there may be a significant degree of uncertainty.

For example, in *Phillips v. Iran*, the tribunal grappled with the difficulty of projecting expected oil prices with any certainty at a time when 'the always uncertain business of forecasting future crude oil prices was even more difficult than usual'. They determined that a potential buyer would have probably assessed a range of future prices.[22]

Even if it is challenging to reconstruct contemporaneous market expectations, primary and secondary markets exist in times of war-like scenarios. Thus, the use of comparable market information is relevant to derive market-based assessments under such circumstances. For the creation of but-for scenario, claimants are likely to have in their possession documents that demonstrate their expectations from the time just before the measures at stake were adopted. However, one must verify if such expectations include or not the contextual changes or the measures claimed. The tribunal in *Phillips v. Iran* highlighted how informative such information would have been had it been presented:

> *it would have been helpful had the Claimant and NIOC provided information on how they themselves or other oil companies viewed in September 1979 the future of the oil price development. It would have been informative to see how, at the time of such high volatility in the world oil market, actual market participants assessed for their business planning and decisions the likely course the oil prices would take and on what scenarios they grounded their decisions at that time.*[23]

Accordingly, even in situations of market uncertainty due to war-like situations, practitioners should adhere to best practice and provide comparable market evidence and data on contemporary expectations.

In the case of a full taking of an asset, such as an outright expropriation, the discussion of ex-ante versus ex-post valuation might be of order. For example, in *DTEK v. Russia*, a case involving the valuation of Ukrainian-owned electricity assets in Crimea, Russia argued that the relevant regulatory regime could be determined based on what ultimately occurred post-expropriation. The tribunal rejected this position, holding that the counterfactual valuations must reflect the expectations of a reasonable buyer at the time of the expropriation, not what is known in hindsight. It accepted the claimant's position that a buyer in 2015 would have expected a transition to a more favourable regulatory regime, even if that transition was later delayed.[24]

In some instances where it may be challenging to reconstruct the expectations at the time regarding the duration or intensity of the contextual conflict, tribunals have resorted to backward-looking approaches to assess the future performance of the expropriated asset. For example, the tribunal in *Phillips v. Iran* identified a risk of reduced future production as a result of national policy changes flowing from the Iranian revolution. Still, it acknowledged that it would be impossible to quantify with certainty.[25] Finally, the tribunal determined that past earnings around the time of the taking were the most reliable measure of value, given the unpredictability of future earnings.[26]

On the other hand, the same tribunal questioned the likelihood that the parties could have anticipated the war that was initiated in 1980 as of a time prior to the commencement of the war, reminding practitioners that hindsight is not always reasonable. It concluded that:

> *With respect to long-term disruptions, while in retrospect it is known that war came to the Persian Gulf in 1980 and resulted eventually in profound and even disastrous consequences for off-shore oil operations, [. . .] the apparent likelihood in September 1979 of such a war is debatable. [. . .] The Tribunal concludes that in September 1979 it could not reasonably have been assumed that these risks would have had a significant effect on the value of the Claimant's JSA interests.*[27]

What risks should be included in the discount rate

Valuation of assets surrounded by disruptive war-like contexts may carry higher risk factors than in regular times. A common challenge lies in determining which risk factors should be reflected in the building of the base case scenario on cash flow projections versus a premium in the discount rate. Misjudging this allocation can result in certain risks being overlooked entirely or, conversely, counted twice in the cash flows and again in the discount rate. The problem of underestimation was present in the *Phillips v. Iran* matter, where the tribunal rejected the claimant's valuation as a proper estimate of market value due to its production and price estimations in combination with a very low discount rate.[28] Similarly, in the *Amoco v. Iran* matter, the tribunal determined that the discount rate should be adjusted to account for certain pre-existing risks to the asset's future net cash flow, including currency risk, force majeure risk and the overall 'hectic environment.'[29]

Country risk is often measured using sovereign debt or CDS (credit default swap) spreads. In times of war, however, such measures should be regarded with caution, as they are directly influenced by the conflict and the sovereign's risk of default or technical default, and may reflect short-run crisis-driven concerns (for example, as of March 2022, JP Morgan has declined to include Russia in its published EMBI benchmark data).[30] Accordingly, these measures no longer capture the exposure to country risk that is relevant for private investments.

The practitioner must take care to capture all relevant risks in the valuation; they must also ensure that whichever risks are reflected in the expected cash flows are not additionally included in the discount rate.

Consider the impact of ownership restrictions on divestments

Finally, in the context of sanctions, forced takeovers and operational disruptions, many companies have been compelled by governments to sell or divest their assets. Strategic restrictions on foreign ownership of energy assets make the pool of willing buyers more restrictive for companies that are required to divest their assets. The price received in a resulting transaction may reflect a discount due to reduced bargaining power of the seller, and the transaction costs imposed by a governmental regulation on its exit options and timing. Accordingly, an investor that is forced to sell may be at a disadvantage, and even more so if forced to sell to a restricted set of potential buyers due to nationality requirements. Experts and tribunals must therefore analyse whether these effects on asset value can be considered a protected measure and how this effect can be parsed out to assess economic damages.

The relevant criterion to determine economic value under the counterfactual scenario is often defined as the fair market value (FMV). The FMV is defined as the price at which an asset changes hands between a willing buyer and a willing seller in an arm's-length transaction under complete information and without compulsion or distress.[31] The FMV criterion excludes forced sales or other transactions that occur under circumstances of compulsion, a restricted market or significant information asymmetries.

In the latter circumstances, the value of companies subject to a forced sale can be conceptually equated to a sale under distress or can even represent a liquidation value. When analysing these situations, it is helpful to distinguish between companies that are forced to sell and those that choose to sell voluntarily in the same market environment. In a case where a forced sale occurs and triggers the breach, the price at which this forced sale occurs may reflect the actual value. In contrast, the but-for scenario might need to be adjusted to exclude the forced-sale factor and any other restriction or effect that can be considered protected.

If the restrictions on foreign national ownership were to be a non-protected measure and are foreseen to become a relatively permanent feature, then the assessment of market value might need to be adapted to a marketplace where only domestic willing buyers exist or where buyers from restricted nationalities are not allowed to participate. Depending on the nature of the ownership restrictions, this situation may or may not affect the assessment of market value. In general, the lower the number of potential willing buyers, the higher the exit costs and thus the lower the market value of the asset.

For example, several Western-owned upstream companies have divested or are seeking to divest from their stakes in Russian projects. The transaction of these Russian-located assets is likely to be subject to the nationality of the potential buyer. Such transactions will most likely command reduced prices, not only in relation to normal operations but also relative to a situation in which no restrictions or disadvantages of foreign ownership are present.

For companies that voluntarily choose to sell their assets, the situation is nuanced. While they might avoid the steep discounts typically associated with forced sales, the sale occurs under adverse market conditions and may be subject to a reduced pool of buyers. The critical determination is whether an investor subject to a forced or pressured sale is entitled to compensation for the gap between the actual sale price and the fair market value, adjusted to exclude value diminution caused by the conditions of the sale. The answer lies with whether the loss in value and motivation to sell stems from circumstances that are attributable to unlawful state measures. If the adverse conditions affecting the asset's value can be traced to wrongful actions by the respondent or the motivation to sell can be linked to unfair treatment for foreign owners, then a claim for compensating the price gap may be justified.

What can we learn from prior cases? In *DTEK v. Russia*, the expropriation of the claimant's downstream electricity operations and assets was preceded by the auction of a stake in the company. Although this auction price did not result from a forced sale and was not related to the measures (it took place years earlier), the tribunal considered that it was a 'natural point of reference'. However, in order to serve as proxy for FMV, it would need to be adjusted for 'the fact that the auction rules strictly limited the number and nature of qualified buyers', as well as to account for the control premium.[32] While the experts submitted evidence regarding appropriate adjustments for the control premium, they did not submit any estimated price impact due to the auction's restrictions on the pool of potential buyers. The tribunal found that an adjustment of 40 per cent was appropriate to reflect both the effect of a restricted pool of buyers and the control premium. Still, it provided no hints as to applicable proportionality of these factors.[33] In other words, as the parties provided no quantitative evidence, the tribunal did not rule on how to quantify the price impact due to restrictions on the pool of potential buyers. In similar circumstances, valuators could examine the literature regarding the discounts observed for asset sales under similar circumstances.

Conclusion

The intersection of war, sanctions, and state interventions related to the Russian war in Ukraine presents challenges for the valuation of energy assets in investment treaty arbitration. As highlighted throughout this chapter, practitioners must grapple with the causal relationship between alleged breaches and the broader contextual disruptions, as well as how to appropriately reflect these factors in damages assessments. Prior case law offers valuable guidance, emphasising the need for contextually grounded but-for scenarios, thoughtful treatment of risk in discount rates and consideration of any constraints on ownership and divestment. While each case must be assessed on its own merits, adopting a structured, evidence-based approach – drawing from both economic theory and practicable data – will be essential for achieving reliable valuations. Ultimately, the goal is to quantify the economic impact of protected measures without overstating or understating the role of a turbulent geopolitical backdrop.

Endnotes

1 Manuel A Abdala and Daniela M Bambaci are managing directors, and Nancy Cherashore and M Agustina Gallo are associate directors at BRG. The authors acknowledge and appreciate the input of their colleagues Lucas Castellini, Julian Vergara and Manuel Soares Gache.

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