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BOOK REVIEW:

GAS AND LNG PRICE ARBITRATIONS: A PRACTICAL HANDBOOK (2D EDITION) BY JAMES FREEMAN AND MARK LEVY Q.C.

Reviewed by Thomas Voisin

I. INTRODUCTION

The second edition of “Gas and LNG Price Arbitrations,” curated by consultant editors James Freeman and Mark Levy Q.C., is a practical handbook written by leading practitioners for practitioners. The fourteen chapters of the Handbook provide a comprehensive overview of gas price arbitration. They examine all stages of a price review and consider the main issues raised by arbitral proceedings involving LNG and gas prices from the perspective of all stakeholders: arbitrators, clients, counsel, and experts. Although commercial by nature, gas price review disputes are unique, and a book dedicated to this topic is certainly more than welcome and needed. To this end, the Handbook is an invaluable, must-have source since there is limited material available publicly for price review arbitrations.

II. THE BOOK

The Handbook begins from first principles with an exploration into the art of drafting price review clauses and their essential elements. Indeed, the Handbook’s Chapter 1 covers the drafting of the price review clause and includes considerations for key terms and concepts, such as “trigger events,” “market economically,” and “value.” Chapter 1 further provides insight into the common problems that may arise from the drafting of price review clauses and continues on to present strategies for solving these issues. When applied, these solutions can assist the parties and arbitral tribunal to narrow the scope of the dispute in future arbitrations.

Moreover, the Handbook proceeds to cover how the price review clauses are implemented in practice both by the parties and—once a dispute arises—by the arbitral tribunal. This involves a comprehensive review of “trigger events” in price review arbitrations: their nature, timing, relevant criteria, and temporal scope. This



is then followed in Chapter 3 with the related discussion of whether the contractual concept of “changes of circumstances” can be used as a price modifier in gas price reviews. The discussion requires a close examination of the doctrine of “hardship” and, quite helpfully, this chapter provides a comparative overview of “hardship” doctrines having regard to common, civil, and sharia law requirements.

The Handbook next turns to procedural matters in gas price reviews. Chapter 4 includes procedural steps that arise before, during, and after the arbitration. Specifically, it encompasses issues such as contract drafting negotiations, the consolidation of arbitrations, written submission and evidence (including expert evidence), and the scope of the final award. Certainly, the evidence is a central issue in price reviews, and Chapter 5 addresses it at length. The chapter discusses the burden and standard of proof while also detailing the types of evidence used typically to support price review claims. Additionally, Chapter 5 explores the role of previous arbitral decisions and the extent to which they may affect subsequent arbitrations.

Furthermore, the Handbook tackles procedural issues relating to confidentiality. One critical element of gas price reviews is obtaining data that shows the price at which gas is sold in the relevant market. Indeed, enabling fair access to such data for the parties is a central point of contention in many price review arbitrations. This data is vital for the resolution of the dispute. Typically, this data includes sensitive commercial information relating to the quantities of gas consumed by customers and the price at which gas is sold, which the Buyer will (naturally) be reluctant to reveal. There is, therefore, an information asymmetry between the parties in accessing this data that must be bridged either by the parties themselves or with the guidance of the arbitral tribunal.

Once completing the discussion of procedural issues, the Handbook next turns to assessing the role of the key players (other than counsel) in the gas price review arbitration. This involves looking at the price review from the perspective of the arbitrator (Chapter 7), the client (Chapter 8), and the expert (Chapter 9). Critically, the general mandate of the arbitrator is discussed, and the manner in which the arbitrator must use the economic expert’s evidence is considered. Furthermore, it



should be noted that the expert in gas price reviews plays a more significant role than in many other types of arbitrations. Indeed, as explained in this chapter, most price review arbitrations are conducted “around a core of expert analysis and evidence” where counsel’s role is often limited to effectively communicating the expert’s evidence to the arbitral tribunal.

Finally, the picture would not be complete without an overview of the lessons learned from the last wave of price review arbitrations. More precisely, these final chapters address the numerous issues raised in adopting hub indexation along with the consequences of its adoption. Moreover, these chapters explain that the widespread (but not unanimous) adoption of hub indexation eliminated notorious issues such as price reviews arising from discrepancies in the value of gas and oil products for many parties. However, the final chapters nonetheless continue on to explain that hub indexation will likely remain a potential source of dispute for parties and may emerge as such in the next wave of price reviews.

III. CONCLUSION

The Handbook concisely and effectively communicates to the reader the expertise and experience gained by practitioners from the last wave of price reviews. This wave emerged largely in Europe and shifted the paradigm: it reshaped the way gas is priced in long-term contracts and, most probably, the way how price reviews will be conducted in the future.

In summary, the Handbook is more than a practitioners’ guide. The Handbook analyses the current and future trends for price reviews and attempts to provide solutions. It is important to note that the Handbook was published before the current energy crisis. There is no doubt that the COVID-19 pandemic will have (and has had) consequences for energy markets worldwide. These consequences will challenge long-term gas supply contracts and, in particular, their price review provisions. In these uncertain times, the second edition of “Gas and LNG Price Arbitrations” will serve as an invaluable and essential guide for practitioners involved in gas price reviews.



THOMAS VOISIN is the Managing Partner of Quinn Emanuel's Paris office. He has represented clients in a number of international arbitrations, both ad hoc (including under the UNCITRAL Rules) and under the rules of major arbitration centers (ICC, ICSID, LCIA, SCC, AFA, etc.), with particular focus on investment, energy, construction and commercial disputes. His experience includes international arbitrations in the oil & gas, power, transportation, mining, aviation and chemical sectors. Thomas is the Assistant Editor of the French International Arbitration Law Reports.



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