

### Welcome to the eighth edition of the Asia Pacific Economic Consulting (ECON) practice newsletter.

These newsletters recap some of the latest developments in the dispute, litigation and international arbitration communities, and will keep you up-to-date with our recent activities, including our latest engagements in the public domain, sponsored events, speaking arrangements and upcoming industry affairs.

If you have any queries, comments or feedback, please feel free to contact us using the details below.

Thank you,

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## Cases and Decisions

### APAC

#### Oei Hong Leong v Goldman Sachs International | 21/09/2013

- **Misled over financial transactions:** Mr Oei Hong Leong has claimed that Goldman Sachs International misled him into making currency trades which lost him more than JP¥3 billion (S\$38 million) when the market fell earlier this year.
- Mr Oei's lawsuit concerns bets made on the Japanese yen. This case is similar to the number of suits that arose following the 2008 and 2009 financial crisis.
- It appears that Mr Oei's trading was based on an expectation of the depreciation of the yen against the Brazilian real. However, news from the U.S. Federal Reserve resulted in the trade going against Mr Oei.
- Rather than falling as Mr Oei had expected, the yen rose against the real and by 13 June, Mr Oei had made six margin calls on his trades that eventually led to an alleged JP¥3.175 billion loss.
- Mr Oei alleges that the advice and claims he had relied upon, which were in turn provided by Goldman Sachs senior director Mats Dewitte, turned out to be false. One such claim, Mr Oei alleges, was Mr Dewitte assertion that Brazilian real was anchored to the U.S. dollar similar to the relationship of the Hong Kong dollar to the greenback.
- Mr Oei further alleges he was told that the Brazilian real-Japanese yen trades were easily tradable and liquid (and therefore could be executed at any time) and behaved very similarly to U.S. dollar-yen trades.

- Mr Oei alleges that the statements were false and also alleges that Goldman Sachs contravened part of the Securities and Futures Act. Source: *Singapore Law Watch*

#### Asto Group v Lippo Group | 10/09/2013

- **Refusal to enforce arbitral award:** Indonesia's Supreme Court has refused to enforce a series of SIAC awards worth US\$303 million issued in favour of Malaysia's Astro Group in a dispute over a failed TV venture. The proceedings in Singapore are, however, set to continue.
- According to Astro, the Supreme Court held that the awards are contrary to public order, interfere with the Indonesian judicial process, "contradict the fundamental principles of the legal system and people at large" and "have violated the state and legal sovereignty of Indonesia."
- Astro, a media conglomerate, commenced arbitration proceedings against Lippo subsidiaries in 2008 over the collapse of a proposed joint venture to set up a direct-to-home satellite TV service.
- The SIAC awards have been confirmed in the UK, Malaysia and Hong Kong. The Singapore Court of Appeal is still considering Lippo's application to set the awards aside. The city-state's highest court is hearing the case on appeal from the Singapore High Court, which dismissed Lippo's application last year.
- Counsel to Astro includes: Soemadipradja & Taher and Wong Partnership. Counsel to Lippo: Eversheds and Drew & Napier. Source: *Global Arbitration Review*.

### About FTI Consulting

FTI Consulting, Inc. 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 centers 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. More information can be found at [www.fticonsulting.com](http://www.fticonsulting.com).

## Other

### **Peru v Caravelí Cotaruse Transmísora de Energía SAC | 20/09/2013**

- **ICSID claim for breach of concession agreements:** Peru has filed a claim against power transmission operator Caravelí Cotaruse Transmísora de Energía, a Peruvian subsidiary of Spanish infrastructure groups Elecnor and Isolux Corsán. The case relates to two concession contracts entered into in 2008 for the construction of electricity transmission lines in the south of the country.
- One of the concession contracts required Caravelí Cotaruse to invest US\$181 million in the construction of 600 miles of 220-kilovolt lines across the central and southern Andes, in exchange for a 30-year concession on the lines.
- In an earlier failed claim lodged by Caravelí, the company claimed that the global financial crisis of that year had prevented it from constructing the power lines and performing the contract.
- Peru is also currently defending seven other cases including a separate claim from Caravelí Cotaruse's co-owner, Spain's Isolux Corsán, which alleges that "*Peru modified its tendering rules to prevent another subsidiary company from bidding for another power line contract.*"
- Counsel to Peru: White & Case; Estudio Echecopar; and Ministry of Economy and Finance. Counsel to Caravelí Cotaruse: Not yet appointed. Source: *Global Arbitration Review*.

### **Danube Foods Group and Clates Holdings Canada v Serbia | 19/09/2013**

- **Dispute arising from breach of due process:** Danube Foods Group and Clates Holdings, Dutch investors, have filed a notice of dispute against Serbia after their investments in the food and drinks industries were hit by a Belgrade high court order purportedly aimed at freezing the assets of the late Russian businessman Boris Berezovsky
- The Belgrade High Court order issued on 11 July at the request of Russia's prosecutor general, froze four Serbian companies in which the Dutch investors had majority stakes, this included Bambi Banat, a chocolate and biscuit producer; dairy producers Imlek and Mlekara Subotica; and mineral water producer Knjaz Miloš.
- Russia asked the Serbian Ministry of Justice to freeze the companies pursuant to a number of orders issued by a Moscow district court in autumn 2012 to attach assets owned by Berezovsky, whom Russia had twice convicted of fraud *in absentia*.

- However, the Dutch investors say that the Serbian court failed to take any steps to verify that the companies had any link to Berezovsky, which they deny and the investors were not notified of proceedings until two weeks after the order had been issued. They also claim that the court incorrectly applied Serbian law.
- The 11 July order was overturned by the Belgrade Court of Appeal in August and remitted to the High Court for retrial. However, the investors claim this has not prevented the damaging financial consequences of the initial ruling.
- The investors' position is that the four companies *in question* were indebted to a number of lenders, with debt amounting to more than EU€100 million when the assets were frozen. They further allege that the majority of debt was in form of short-term loans, which are now exposed to the possibility of default and liquidation as a result of the orders. They also claim that the High Court order caused a Serbian bank to pull out of an agreed loan intended to stabilise the companies' financial position.
- Moreover, the investors also allege that the Court of Appeal did not instruct the High Court to expeditiously dispose of proceedings, which could now lead to losses over EUR 100 million.
- Counsel to Danube Foods Group and Clates Holdings: Jones Day. Source: *Global Arbitration Review*.

### **Gennady Mykhailenko and United Pipe Export Company Trading v Belarus | 17/09/2013**

- **Gas price dispute:** Gennady Mykhailenko, a Ukrainian national imprisoned by the Belarusian authorities, has filed a notice of dispute against the state for US\$175 million over the alleged expropriation of his investment in a steel pipe factory.
- Mykhailenko has alleged that he was arrested by the Belarusian state security service in 2005 and detained for 11 months, before being convicted for economic crimes including fraud and a six-year prison sentence. Mykhailenko alleges that the charges were politically motivated.
- Mykhailenko is now seeking US\$175 million in compensation for the alleged expropriation of his factory, damages for the impact of his prison term on his other businesses, as well as moral damages.
- Counsel to Gennady Mykhailenko and United Pipe Export Company Trading: Lazareff Le Bars. Source: *Global Arbitration Review*

## Industry Insight

### Solar power industry – favourable market economics?

Renewable energy has often taken centre stage in energy and environmental policy debates as a potential solution to our planet's long-term energy and pollution problems. Renewable energy, in 2011, accounted for c. 19% of the global final energy consumption.<sup>1</sup> Some forms of renewable energy have been more successful than others, based on their relative economic cost. Heat energy produced from renewable sources accounted for c. 4% of total final energy use and hydropower accounted for another c. 4% in 2011.

Globally, however, recent estimates place the contribution of solar power at less than 0.25% of total electricity supply.<sup>2</sup> This is despite recent rapid growth in capacity. In 2003, the total output from solar panels was 2.8 gigawatts, similar to that of six average sized coal power stations. This capacity increased to 100 gigawatts in 2012 - a compound annual growth of c. 50%.<sup>3</sup> While this growth was largely driven by favorable renewable energy support policies and subsidies, at least in some countries, future growth is expected to be a function of the rapidly declining costs of solar panels, which are expected to render it more competitive with the conventional power sources that dominate energy production today.

When solar panels were first introduced in 1970s, they were sold for more than US\$70/watt in current, 2012 prices. Today, they cost less than US\$0.80/watt with prices plummeting by 80% in the last 5 years alone. Part of this fall in prices has been an increase in supply. Solar power manufacturers around the world ramped up production to meet the demand created by government policies such as EU-supported subsidies. More recently, a flood of low-cost Chinese solar panels, perhaps also partly a function of government support, has driven prices down further. These advances are important, although they are often overshadowed in media discussion by the wave of bankruptcies that has hit the industry worldwide.<sup>4</sup>

The price of power generated from solar panels varies widely depending on the location. For example, in Europe, the average cost of solar power generated by a residential solar panel system ranges from EU€151/KWh to EU€275/KWh – more than double the cost of power from new nuclear, gas or onshore wind plants. Despite such stark differences, solar panel systems can be cost effective in countries with high power prices. For instance, the lifetime cost of power produced from a solar panel fell below industrial power prices in Germany last year, making it cheaper for businesses to install

and use their own solar power instead of buying it from a utility.<sup>5</sup>

While coal- and gas-fired plants costs between c. US\$1 and US\$3 a watt to build in the U.S., not including the costs of the fuel itself (compared to more than US\$4 per watt for solar power stations), comparing the cost of wind and solar power with that of coal- and gas-fired electricity generation is more than just a matter of comparing the construction and operating costs of the plant and its fuel. Reliability of supply is also a crucial factor. The erratic nature of sunshine, for example, is considered an impediment in the adoption of solar energy. A solution to this problem has been the subject of intensive research, largely focused on the development of batteries to store electricity during surplus for later use during periods of scarcity. Development of flow batteries may be instrumental in aiding the development of solar energy. These devices, which are essentially hybrids between traditional batteries and fuel cells, use liquid electrolytes and can store energy in chemical form.<sup>6</sup> The availability of cost-effective battery storage may in time fundamentally alter the market economics of energy.

While such developments are all positive news, the current production economics of solar power and the scale of investment in fossil-fuel technologies may result in only a gradual transformation of the energy sector. Developments in such primary fuels, such as the development of shale gas drilling in the U.S., and similar efforts by other countries, might imply a further growth in gas-fired generation, which currently accounts for around 20% of global electricity generation.

Besides economics, policy changes may also limit the growth of large scale solar power generation. In July 2013 in the U.S., Arizona's largest utility, APS, asked regulators to look at imposing fees on people installing new rooftop solar systems to help pay for the costs of a grid they are using 'for free'. As the number of customers installing solar panels goes up, it drives rates higher for non-solar customers, as a smaller number of people will be paying for fixed distribution capacity. This is also a problem in certain European countries where the overall electricity capacity is far higher than peak demand. For instance, in Spain, the EU's third-largest solar market after Germany and Italy, government produced a proposal in July 2013 to impose new charges on rooftop solar owners.<sup>7</sup>

Low-cost solar panels could help developing countries leapfrog traditional power grids in the same way parts of the developing world sidestepped fixed-line telecommunications networks and went straight to mobile phones. A lack of access to traditional sources of electricity (due to a lack of infrastructure) can allow for rapid development of renewable sources especially solar panels which can be set up for independent household units.

<sup>1</sup> Renewables 2013, Global Status report.

<sup>2</sup> <http://www.economist.com/news/21566414-alternative-energy-will-no-longer-be-alternative-sunny-uplands>

<sup>3</sup> Renewables 2013, Global Status Report, p 41.

<sup>4</sup> <http://www.ft.com/intl/cms/s/0/a41d86b4-ff9c-11e2-a244-00144feab7de.html#axzz2fm4Dnwpa>

<sup>5</sup> <http://www.ft.com/intl/cms/s/0/a41d86b4-ff9c-11e2-a244-00144feab7de.html#axzz2fm4Dnwpa>

<sup>6</sup> <http://www.economist.com/news/21566414-alternative-energy-will-no-longer-be-alternative-sunny-uplands>

<sup>7</sup> <http://www.ft.com/intl/cms/s/0/a41d86b4-ff9c-11e2-a244-00144feab7de.html#axzz2fm4Dnwpa>

In the developed world, countries that adopt the right policies to enable the growth of solar power could take advantage of fall in solar panel prices to move towards more environmentally friendly means of generating power.

The changing environment, and especially the recent drop in cost of solar energy production; favorable economics; and progress in energy storage can mark a key turning point for the industry and the companies involved in the value chain. These events need to be considered in any evaluation of the opportunity presented by solar energy and the businesses engaged in it.

### Thought of the Month: Third party funding – the debate goes on?

At the Chartered Institute of Arbitrators (CIArb) International Arbitration Conference in Penang, the Honourable Chief Justice of Singapore Sundaresh Menon highlighted potential issues arising from the increasing involvement of third party funding in international arbitration. Chief Justice Menon discussed many of the topics raised in our "Third-Party Funding: Incentives and Outcomes" paper, which was published in GAR's review: "The European, Middle Eastern and African Arbitration Review 2013" earlier this year.<sup>8</sup>

International Arbitration is becoming an increasingly attractive destination for Third Party Funders who are able to offer something quite unique to their investors, a return uncorrelated with the stock market. This, it has been suggested, could give rise to the packaging of cases, both meritorious and unmeritorious) into investment products.

However, the limited, irregular and sometimes unforeseeable duration of cases combined with non-standard returns limits the possibility packaging actions together for resale when compared for example with mortgages. We therefore consider it more likely that individual specialist funds will dominate the market, with experienced litigators and experts being prime candidates to identify the meritorious cases worthy of investors' funds.

We expect to see increasing interest from investors; the question is how those who serve, conduct and administer international arbitrations will respond. Further, certain potential conflicts as highlighted by the Honourable the Chief Justice Sundaresh Menon and James Searby in his article must also be dealt with to ensure effective long-term sustainability of such funding.

<sup>8</sup> <http://globalarbitrationreview.com/reviews/50/sections/172/chapters/1926/third-party-funding-incentives-outcomes/>

## FTI Consulting News

### Recent and Upcoming Events

- We are pleased to announce that on 9 September 2013 FTI Consulting Singapore moved offices to facilitate its rapid expansion in the region. Launched in 2004, our Singapore office has grown to over 50 employees representing each of our core practices of Corporate Finance/Restructuring, Forensic and Litigation Consulting, Economic Consulting, Technology and Strategic Communications.
- The Singapore Economic Consulting team has expanded from two people in mid-2012 to 9 people today. The team has significant experience in dispute advisory, litigation, arbitration and asset valuation together with expertise in complex financial and economic issues including intellectual property and auction advisory.
- Recently, we have welcomed Richard Hayler (Director) from Deloitte, Braden Billiet (Consultant) from FTI Consulting in London, and Calson Kong and Eunice Yeo (Research Analysts), both from Singapore.
- Thank you to everyone who attended FTI Consulting's Annual Cocktail Reception in Singapore (3 October). The event was a great success and we greatly appreciate your support. James Searby and Richard Hayler will be attending our Annual Cocktail Reception in Jakarta (10 October).
- James Searby and Montek Mayal continue the development of our dispute resolution practice in India with an upcoming four-day visit to Delhi and Bangalore. This is their first trip to Bangalore following various trips to Delhi and Mumbai over the last 12 months. Should you be interested in meeting with them, please contact [Montek Mayal](#).
- James Searby will be travelling to Australia for 10 days in October, he will be visiting Perth, Adelaide, Sydney and Melbourne, and building on the successful trip with Howard Rosen earlier this year. If you are interested in meeting with James, please [contact him](#) to arrange an appointment.
- FTI Consulting attended the SMU Singapore Career Fair last month reinforcing our commitment to continue expansion in the Singapore market with local recruitments.

**Should you have any feedback or questions on anything you've read, please feel free to contact Montek by phone at +65 6831 7813 or by email: [montek.mayal@fticonsulting.com](mailto:montek.mayal@fticonsulting.com).**

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