

At A Glance

NERA's International Arbitration Practice

Overview

For more than half a century, NERA experts have been central to client success in high-profile disputes, regulatory proceedings, and business challenges. Our international arbitration experts provide independent economic and financial analysis in both commercial and investment treaty arbitrations.

We are market experts, and damages and valuation specialists. NERA experts are active advisory consultants who regularly provide strategic advice to investors, corporations, and governments on market restructuring issues, regulatory design and reform, due diligence, and competition matters. We deliver authoritative expert reports and testimony—whether valuations, causation determinations, damages assessments, or regulatory opinions—drawn from our specialised knowledge of regulated industries and competitive markets.

Specialised Sector Expertise

A deep understanding of the functioning of specific markets is essential to persuade tribunals and ensure the best possible outcomes. NERA experts regularly support industry players, investors, and public sector institutions in many industries, including:

- Energy markets and assets (gas, electricity, oil, renewables, and nuclear)
- Water
- Telecommunications
- Transport (airports, rail, and toll roads)
- Infrastructure
- Mining
- Banking, finance, and securities
- Manufacturing
- Distribution
- Pharmaceuticals and chemicals

Complex Disputes Raise Complex Economic and Financial Issues

Our well-earned reputation for objectivity and independence allows NERA experts to provide arbitration panels with the degree of credibility and reliability they require to make informed decisions.

Our experts are recognised for presenting sophisticated applications of accepted economic and financial theories and practices, and for communicating concepts, opinions, findings, and conclusions in a persuasive manner.

Global (and Local) Reach

With more than 25 global offices, NERA experts provide a strong local presence, multilingual capabilities, and an understanding of subtle regional differences that enable us to articulate the independent advice and expert testimony needed for successful outcomes in



arbitration institutions around the world. NERA experts have testified in ad hoc proceedings and in arbitration proceedings under all of the major institutional and procedural rules, including those of the International Chamber of Commerce (ICC), International Centre for Settlement of Investment Disputes (ICSID), London Court of International Arbitration (LCIA), and Permanent Court of Arbitration (PCA).

Experience in International Arbitration

NERA has a large pool of experts with in-depth sector knowledge and extensive testifying experience. The following representative engagements are illustrative of the breadth of our expertise in international arbitration.

Energy Disputes

European Gas Pricing Dispute

A large European utility entered into a long-term gas supply contract with a gas producer. The contract gave the buyer flexibility to determine daily offtake quantities and locations, and provided for periodic price reviews to ensure that the contract price reflected the value of gas, in particular with respect to the price of alternative fuels. The contract was signed at a time when competition in gas markets was limited, both within and across the national markets of various European countries. Since then, competition had increased as gas markets became liberalised and integrated across the EU member states.

In an arbitration regarding a price review of the contract, NERA provided expert testimony on (i) the value of the contractual flexibility regarding offtake quantities and locations, (ii) the relevance and value of natural gas as a competing alternative to other fuels, and (iii) the value of the buyer's existing commitments to resell the contract gas. NERA's analysis highlighted the importance of understanding the context of gas market competition for the valuation of various contractual provisions.

Indian Power Dispute

An Indian state government argued that a "comfort letter" committed an electric distribution company to pay for electricity that the company had acquired from the state energy supplier. The distribution company's new investor disagreed. The dispute was referred to an arbitration panel, which sought a compromise between the parties.

NERA was retained to offer testimony on structural reform in the power sector. NERA's experts noted the numerous ways the government had defaulted on its obligations (e.g., the failure to provide compensatory tariffs and to pay its own bills). They also pointed out that the government's argument implied that the investor had agreed to fund operating losses through equity contributions, which would have been highly unusual. Based on NERA's arguments, the arbitration panel ceased looking for a political compromise and began pursuing a ruling based on the case's business and legal merits.

Investor-State Disputes

Nationalisation of Belize's National Telecoms Operator

Following its takeover of national telecoms operator Belize Telemedia, the Government of Belize retained NERA for a PCA arbitration under the United Nations Commission on International Trade Law (UNCITRAL) rules. NERA provided expert testimony on the fair market value of Belize Telemedia at the time of nationalisation, as well as a critique of the valuation presented by the claimant's expert.

The assessment of fair market value included forecasting hypothetical cash flows if the government takeover had not occurred, based on adjustments to the management business plan. These forecasts were used as inputs into a model that discounted projected cash flows at a rate reflecting the risk of earning those cash flows. NERA's approach contrasted to the opposing expert's approach, which rejected the management business plan and instead relied on a bottom-up model forecasting revenues and costs at a much more granular level. In the public award, the tribunal sided with NERA's valuation approach, concluding, "the Tribunal prefers the 'top down' model developed by [NERA] as a starting point for its own conclusions."

Water Concession Contract Dispute in Latin America

An international water operator signed a long-term concession contract to provide water and wastewater services to a major Latin American city. Under the terms of the contract, water and sewerage tariffs would be reviewed every five years following the tariff setting methodology described in the concession contract. However, at one of these periodic tariff reviews, the water company and the public entity in charge of setting water tariffs disagreed on the appropriate new level of tariffs and entered into arbitration proceedings.

NERA was retained by the water company in both the liability and quantum phases of the arbitration. NERA experts provided expert opinions on various issues regarding the water setting methodology (i.e., the recovery of capital investments and the appropriate cost of capital that the company should be allowed to recover), as well as on the amount of damages suffered by the water company by not being able to increase its tariffs in accordance with the concession contract. NERA's analysis included an economic assessment of the risk allocation features of the concession contract and a study of alternative mechanisms to compensate the company for foregone revenues. The case settled in the final stages of the dispute.

Disputes Involving Complex Damages and Valuation Assessments

Post-M&A Dispute: Breach of Warranty Claim

An international investor presented a breach of warranty claim against the vendor of a retail business operating in China. The claimant alleged that significant contingent liabilities had not been appropriately disclosed and invoked the post-sale and purchase agreement to obtain compensation.

NERA experts considered the impact that the alleged non-disclosures would have had on the final purchase price paid by the acquirer. This included a review of the sale process, the market conditions, the offers submitted by other investors interested in acquiring the company, and the institutional and trading environment. NERA presented its conclusions to the tribunal at a hearing.

Breach of Contract Dispute: Assessment of a Fair Tender Price for a Minority Shareholder

NERA provided a quantum assessment for an ICC case involving an alleged breach of contract between a foreign investor and a local investor in an Eastern European manufacturing company. The claimant, a large diversified financial company that owned a minority share in the manufacturing company, alleged an underpayment of dividends and an improper tender offer (aimed at acquiring the majority stake by the foreign investor). The claimant also alleged that the company failed to conduct a proper foreign exchange hedge prior to the tender offer.

NERA conducted extensive research on the minority shareholder's investment decisions and the comparable available investments in the same manufacturing sub-industry. NERA experts also assessed the fair price that should have been charged at the tender offer. The assessment of the fair tender price involved an evaluation of the appropriate majority ownership premium.

About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.



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**NERA's global team of experts operates
out of more than 25 offices around the world.**

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