

Services and Capabilities

International Arbitration

A close-up photograph of a wooden gavel with a silver band, resting on a stack of books. The background is a blurred image of a person in a suit, possibly a judge or lawyer, in a courtroom setting. The overall color palette is dominated by blues and greens.

Our team of experts offers an exceptional combination of economic credentials, industry expertise, and testifying experience.

International arbitration is now the preferred method of resolving cross-border disputes across a diverse range of industries and geographies. Over the last decade, the number of international arbitration proceedings has grown steadily—and so too has the complexity and value of those disputes, which often require, increasingly sophisticated economic analysis and advice.

For over half a century, NERA experts have been central to client success in some of the world's highest-profile disputes, regulatory proceedings, and business challenges. Our international arbitration experts help clients through all stages of the arbitration process, providing specialized expertise in both commercial and investment treaty arbitrations. Our experts provide authoritative, independent economic analysis, valuation opinions, causation determinations, damages assessments, regulatory opinions, expert reports, and testimony. They draw on decades of experience, combined with specialized knowledge and deep expertise in regulated industries and competitive markets. NERA economists have provided these services in major arbitration venues around the world, from the US to Europe, Asia, the Middle East, and Latin America.

We have a well-earned reputation for objectivity and independent economic and financial analyses and expert reports. This allows us to provide arbitration panels with the degree of credibility and reliability they require to make informed decisions.



NERA's International Arbitration Practice

Complex disputes raise complex economic issues.

NERA provides a large in-house team of economists complemented by a network of recognized academic experts. Our arbitration team has experience providing expert testimony on economic principles, industry practices, and economic interpretations of contractual rights. Our experts are recognized for presenting rigorous and sophisticated applications of accepted economic and financial theory and for communicating concepts, opinions, findings and conclusions in a clear, understandable, and persuasive manner.

NERA experts are retained in disputes related to bilateral investment treaties, in arbitration cases over insurance coverage for political risk, in pre-arbitration damage assessments, in the process of contract renegotiation for the avoidance of arbitration, and in the formulation of strategies to deal with termination of concessions. We also regularly consult on market restructuring issues, regulatory design and reform, due diligence, and provide strategic advice.



Our Global (and Local) Reach



With experts in more than 20 offices across Europe, Asia, and North America, our arbitration team can provide a strong local presence and broad language capabilities that enable us to articulate the independent advice and expert testimony needed for successful outcomes across all arbitration venues. Our experts understand the subtle and regional differences from one arbitration institution to another, and excel at taking highly complex economic issues and communicating them to panels and tribunals in a clear and impactful manner.

NERA experts have testified in arbitration proceedings under all of the major institutional and procedural rules, including:

- International Chamber of Commerce
- International Centre for Settlement of Investment Disputes (ICSID)
- London Court of International Arbitration (LCIA)
- UNCITRAL
- American Arbitration Association

We also have substantial industry-based and regional institutional experience, including:

- Japan Commercial Arbitration Association
- Vienna International Arbitral Centre of the Austrian Federal Economic Chamber
- Lands Tribunal
- Financial Industry Regulatory Authority
- New York Stock Exchange
- National Association of Securities Dealers



Our arbitration experts have worked on matters in and/or involving parties in many countries around the world, including:

- Algeria
- Argentina
- Australia
- Austria
- Belize
- Canada
- Cayman Islands
- China
- Fiji
- France
- Germany
- Greece
- Honduras
- Hong Kong
- India
- Ireland
- Israel
- Italy
- Japan
- Kenya
- Kurdistan
- Mexico
- New Zealand
- Northern Ireland
- Peru
- The Philippines
- Qatar
- Romania
- Sierra Leone
- Singapore
- Spain
- Sweden
- Tanzania
- Turkey
- United Kingdom
- United States of America
- Vanuatu

Industry and Sector Expertise

Our experts have international arbitration experience within the following sectors and industries:

- Biotechnology
- Construction
- Energy
- Financial services
- Forestry, paper and lumber
- Hotel and leisure
- Infrastructure
- Intellectual property
- Manufacturing and consumer products
- Mining
- Oil and Gas
- Pharmaceuticals
- Shipping
- Technology
- Telecommunications
- Textiles
- Transportation



Representative Engagements

NERA's experts bring to bear a passion for finding the right answer. The following representative engagements illustrate the breadth of our expertise in international arbitration.

Manila Airport BOT Arbitration

The Philippine International Air Terminals Co. (PIATCO) was awarded a contract to build a new international terminal at Manila's Ninoy Aquino International Airport. The contract resulted in international litigation when the Philippine Supreme Court ruled that PIATCO's contracts were null and void *ab initio* because PIATCO had failed to satisfy the minimum legal requirements to qualify to bid for the project. An arbitration panel was asked to rule whether the build-operate-transfer (BOT) contract was invalid because it had been procured in a fraudulent manner. NERA was retained by the government of the Philippines to produce expert reports for submission to the ICSID and the ICC's International Court of Arbitration. NERA analyzed the project and contracts and showed that the metric used by PIATCO in the contract procurement process included money already flowing to the government. NERA's analysis also revealed that the bidder had turned the airport construction project into two projects—a terminal and a shopping mall—which increased the risk to the government without a corresponding increase in benefit. NERA demonstrated conclusively that the contract procurement process had clearly been corrupted enough to obviate the intended benefits of a competitive process.



Investment Dispute in Turkey

PSEG Global (PSEGG) signed a concession contract to build the Konya-Ilgin power plant and associated coal mine in central Turkey. In subsequent negotiations, the Ministry of Power imposed additional conditions on the terms of the purchased power agreement, which ultimately led to the cancellation of the project. PSEGG filed a claim before the ICSID alleging that Turkey had breached the contract and the result was the expropriation of PSEGG's investment. The case was bi-furcated into a jurisdictional phase and a liability and damages phase. NERA filed expert statements in both phases of the case. The NERA expert first explained the characteristics and implementation process for BOT power projects and then analyzed the steps taken to implement the project over the seven-year period. The NERA expert opined that the expenditures by the sponsors of the Konya-Ilgin project were incurred a manner consistent with the framework and work program established by the project's authorizing documents. The NERA expert then demonstrated that, due to a change in policy regarding BOT projects, the Turkish Government took a series of positions that were inconsistent with good-faith commercial practice and destructive of the financial feasibility of the project. Based largely on NERA's expert testimony, PSEGG won the jurisdictional phase of the dispute.

Expert Advice to the Government of Ireland in its Cases before the United Nations

The Government of Ireland sued the Government of the United Kingdom with respect to reprocessing and fabrication of MOX at the Sellafield nuclear fuel reprocessing facility. In separate arbitrations, it sued pursuant to the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) and again pursuant to the United Nations Convention of the Law of the Sea (UNCLOS). The Government of Ireland retained NERA to provide advice in each case. In the first case, a NERA economist provided a report analyzing the economic basis of UK government's reasons for withholding information from the government of Ireland on commercial confidentiality grounds. The report provided detailed evidence from the market for managing plutonium, the market for uranium and the market for spent fuel. In the second round NERA provided a detailed analysis of the UK's counter-memorial.



Spanish Gas Supply Agreement Arbitration

NERA was retained by a Spanish electricity producer to act as an independent expert in an arbitration process to settle a dispute about a Gas Supply Agreement (GSA). The GSA constrained the full entering into force of the Agreement unless the supplier entered into a regasification contract with the gas system operator, prior to a given date. However, access to the gas supply was denied on the grounds that no capacity was available. The contract was then modified by extending the period allowed to comply with or waive the regasification contract condition and by establishing that alternative solutions would be pursued if the access issue persisted. The supplier subsequently waived the condition and considered the GSA as being in force. However, the purchaser stated that, as there was no indication of possible alternative gas supply solutions, it could not accept the waiver as a valid trigger for the GSA to enter into force. NERA's expert was asked to opine on two aspects of the dispute: whether the need to write a regasification contract represented an essential contractual obligation for the supplier and whether this was necessary for the valid implementation of the GSA; and the amount of possible damages that the non-execution of the GSA could have implied for the supplier. NERA's analysis of the natural gas market in Spain demonstrated that the first condition was an essential aspect of the GSA, and the failure to get physical access to the purchased gas affected the commercial expansion of the buyer in the national gas market. NERA also analyzed and projected international and national gas and LNG prices and showed that the damages estimates alleged by the supplier were unrealistic. NERA's analyses largely determined the successful renegotiation of the GSA by the parties on terms favorable to the purchaser.

Insurance Arbitration over Securities Class Action

A Fortune 100 company was in dispute with its insurers over a securities class action lawsuit settlement for nearly \$200 million. An arbitration in London dealt with, among other issues, the reasonableness of the settlement. A NERA expert testified on behalf of the Fortune 100 company with regard to the reasonableness of the underlying settlement, relying on analyses including statistical modeling based on NERA's database of securities class action settlements.

Argentine Political Risk Insurance Litigation

The privatization of most state-owned infrastructure businesses in Argentina in the 1990s, which attracted more than \$22 billion to the Argentine economy, was primarily funded by debt from major international lenders. The lenders were attracted in large part by concession contracts that used the US dollar as the basis for future regulated charges. In 2002, Argentina passed a law removing the US dollar clause in concession contracts, devaluing the Argentine peso and instituting a peso-based tariff freeze. As a result, regulated prices were effectively reduced by two-thirds in US dollar terms, causing most privatized utilities to quickly default on their debt payments. NERA provided evidence for consortiums of major international lenders in three prominent cases—two involving electric utilities and one involving Argentina’s largest privatized toll-road concession. Two of the proceedings were before the LCIA, while the third was before an ad-hoc arbitrator. In all three cases, underwriters had claimed that the general business environment (a non-covered risk) had caused the defaults, not loss of the US dollar clause. NERA supported the claimants' counsel by providing advice based on expertise in regulatory and economic matters in the energy and transportation industries. NERA economists analyzed the financial and operating performance of the regulated businesses and developed financial models to examine the borrowers' capacities to repay their debt. Evidence presented by NERA showed that the defaults were a direct and inevitable result of politically-driven changes to concession contracts. As a result, all three cases ended favorably for NERA's clients.



Indian Power Sector Dispute

An Indian state government argued that a "comfort letter" committed the purchaser of an electric distribution company to pay the purchased power costs that the distribution company owed to the State energy supplier. The distribution company's new owner disagreed. The dispute was referred to an arbitration panel, which sought a compromise between the state and the purchaser of the distribution company. NERA was retained to offer testimony before the arbitration panel on the fundamental premise of structural reform in the power sector, which included a commitment to the commercial operation of the sector in order to attract private investment. NERA's experts noted the numerous ways in which the government and the regulator had defaulted on their obligations, including the failure to provide compensatory tariffs, to pay their own bills, and to employ the state police powers against theft and intimidation. NERA also pointed out that the government was essentially arguing that the investor had agreed to fund operating losses through equity contributions, which would be a highly uncommon business practice. If accurate, the government's argument would pierce the investor's corporate veil, an occurrence that was highly managed through the layers of subsidiaries that the corporation had established. Based on NERA's arguments, the arbitration panel ceased looking for a political compromise and began pursuing a ruling based on the issue's business and legal merits.



Peruvian Electricity Transmission Dispute

A concessionaire alleged that the Peruvian government had violated a Legal Stability Agreement (LSA) relating to discrimination in the setting of compensation for electricity transmission service. The government of Peru retained NERA to represent its position before ICSID. NERA produced an expert report addressing liability and damages estimates. The report provided insight on economic fundamentals in the case, including comparative electric utility regulatory systems, industry practice regarding electric sector concessions, and applicable compensation and damages issues. NERA's experts demonstrated the fallacy of using regulatory arguments in a commercial setting, noting the concessionaire's misrepresentation of the LSA and the unwarranted wealth transfer that its claim represented. The NERA report also showed that the claimant's investment was an "integrated project" and proved that the company had benefited in the past from royalty reductions. The tribunal ruled in favor of the government, stating that the fundamentals of claimant's case were wrong from a legal, commercial, and regulatory perspective. No damages were awarded.

Polish Telecommunications Dispute

In 1994 Danish Polish Telecommunication Group (DPTG) entered into a joint venture with Telekomunikacja Polska S.A. (TPSA) to finance the construction of a new telecommunications backbone in Poland (the NSL). The parties agreed on the basis for sharing the revenues generated by the NSL between 1994 and 2009. However, in 2001 DPTG initiated an UNCITRAL arbitration proceeding against TPSA in a dispute over the determination of traffic volumes carried, claiming that it had not received the 14.8% of net revenues to which it was entitled. DPTG retained NERA as an expert witness to estimate the damages suffered by DPTG as a result of TPSA's actions. NERA's role involved estimating the flows of telecommunications traffic between different areas in Poland, determining the extent to which they use the NSL and calculating DPTG's share of the resulting net profits. DPTG reached a settlement with TPSA and received payment of €550m (\$709m) to end 10 years of arbitration.

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 20 offices across North America, Europe, and Asia Pacific.

For more information about our capabilities and services in International Arbitration, please visit www.nera.com/arbitration.





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