

OILCOM TANZANIA LIMITED vs ORYX ENERGIES TANZANIA LIMITED and ORYX ENERGIES SA

Quantification Summary

Introduction

I am Juliette Fortin, a Fellow of the Institute of Chartered Accountants in England and Wales and a Senior Managing Director in the Paris office of FTI Consulting, a global expert services firm specialising inter alia in litigation support and valuation. I have extensive experience in valuation issues such as the quantification of damages claims in domestic and international commercial and investment disputes.

I have been mandated by Oryx Energies Tanzania Limited (previously called Oryx Oil Company Limited) and Oryx Energies SA (together “Oryx” or the “Respondents”) to provide my expert opinion in the context of the arbitration opposing them to Oilcom Tanzania Limited (“Oilcom”, or the “Claimant”). The Claimant and the Respondents are collectively referred to as the “Parties”.

I summarise below my main conclusions on Oilcom’s claims, and more specifically on Oilcom’s assessment of its claim related to the Transit Transport Agreement.

My main conclusions on Oilcom’s claims

In January 2021, Oilcom set out six heads of claim (“Claims”), that it quantified at USD 131.6 million over the period from 2017 to 2020. In March 2023, Oilcom updated its assessment of the Claims to USD 173.1 million over the period from January 2017 to February 2023.

First, Oilcom did not prove it actually incurred a loss on any of its Claims. Indeed, it is possible that Oilcom has mitigated any alleged loss, and therefore has not suffered a loss.

Assuming that Oilcom had suffered a loss (which would remain to be proven and valued), I understand that Oryx and Oilcom’s positions differ with respect to these Claims which are all challenged by Oryx.

Assuming Oryx’s position, under which Oilcom fails to consider several clauses from the agreements signed between the Parties and misinterprets others, were to prevail entirely, Oilcom’s Claims would be null.

Assuming Oilcom’s position were to prevail, I assess Oilcom’s Claims over the period from January 2017 to February 2023 between USD 10.8 million and USD 13.4 million, i.e. between 6.2% and 7.7% of Oilcom’s assessment, depending on whether Oilcom’s services related to the Transit Agreement, the Local Transport Agreement and the Hospitality Agreement are used since April/May 2021 or not. My assessment of Oilcom’s Claims differ significantly from Oilcom’s assessment because:

- Oilcom claims for the revenues it has allegedly lost, whereas the Claims should be based on lost profits. Indeed, awarding Oilcom’s for lost revenues results in an overestimation of the Claims as this would imply (i) paying Oilcom’s for the revenues it was not able to earn while (ii) it did not incur any costs relating to the services it would have rendered; and
- Oilcom’s assessment presents several fundamental flaws.

I summarise in the table below Oilcom’s assessment and my assessments of Oilcom’s claims, both under Oryx’s position and Oilcom’s position.

Oilcom's assessment and my assessment of Oilcom's Claims, before interest (in USDm)

Agreement at stake	Oilcom's assessment	My assessment under Oryx's position	My assessment under Oilcom's position	
			Assuming Oilcom's services are not used since April/May 2021*	Assuming Oilcom's services would have been provided since April/May 2021
Transit Agreement	147.2	-	6.1	8.4
Local Transport Agreement	10.4	-	0.9	1.0
Transit Agreement	3.5	-	3.6	3.6
Storage Agreement	3.3	-	0.05	0.05
Hospitality Agreement	5.8	-	0.1	0.3
Profit Sharing Agreement	2.9	-	-	-
Total	173.1	-	10.8	13.4

My main conclusions on Oilcom's claim related to the Transit Transport Agreement

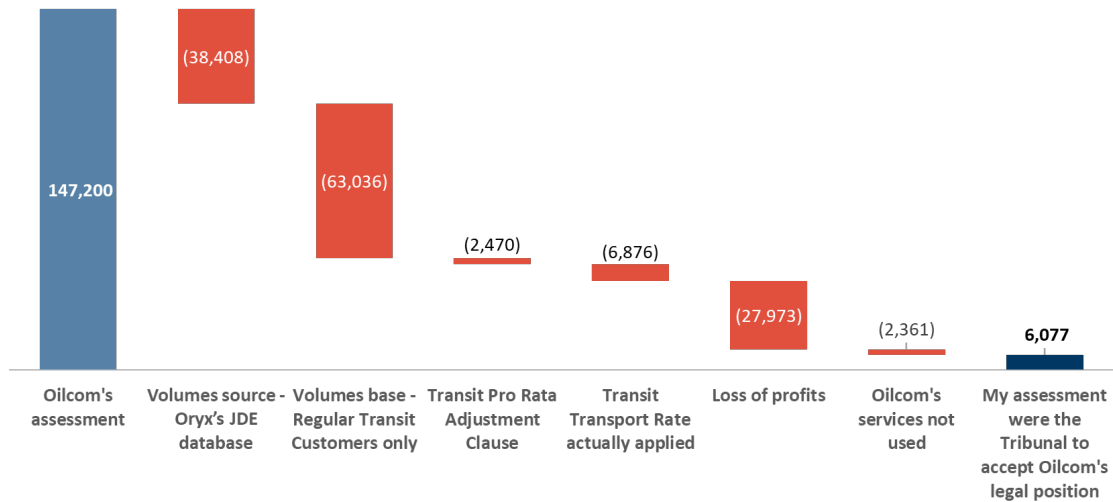
Oilcom assesses its claim related to the Transit Agreement at USD 147.2m over the period from January 2017 to February 2023.

However, assuming Oilcom's position were to prevail, I assess this claim between USD 6.1 million and USD 8.4 million, i.e. between 4.1% and 5.7% of Oilcom's assessment, depending on whether Oilcom's services are used since April/May 2021 or not. My assessment corrects Oilcom's following flaws:

- Oilcom wrongly estimates the minimum volume of oil products it should have transported as:
 - the actual volumes transported should be based on extracts from Oryx's accounting and reporting system;
 - the minimum volume Oilcom should have transported should be based on actual volumes transported to some of Oryx's customers only, and not to all of them, and
 - the minimum volume Oilcom should have transported should be pro-rated to account for the non-availability of a Petrol Station;
- Oilcom fails to apply the correct rate; and
- Oilcom wrongly claims for lost revenues rather than lost profits.

I present in the figure below the difference between Oilcom's assessment of claim related to the Transit Transport Agreement and my assessment of claim related to the Transit Transport Agreement under Oilcom's position.

Bridge analysis of Oilcom's assessment of claim related to the Transit Transport Agreement and my assessment of claim related to the Transit Transport Agreement under Oilcom's position (in USDk)



Yours sincerely,

30 April 2024

Juliette Fortin