

ORYX ENERGIES VS OILCOM - LITIGATION SUMMARY

CONFIDENTIAL

1. Highlights of the Agreement

In November 2016, ORYX ENERGIES and OILCOM signed an agreement (the “Agreement”). Two main points emerged from this agreement:

- The leasing of 19 petrol stations by OILCOM (lessor) to ORYX ENERGIES (lessee).
- A transportation agreement allocating 40% of a reference volume determined by ORYX ENERGIES’ indicative total volumes for their regular customers in transit as listed in the Agreement and the transportation agreement. The list of customers was defined by legal and business constraints.

2. Start of the Litigation

- In May 2019, ORYX ENERGIES received a first claim for US\$ 5 million based on 40% volumes related to listed customers meaning that volume perimeter is in line with the Agreement wording. Claim valorisation was based on profit which according to OILCOM’s calculation is 40% of the turnover.
- In January 2021, ORYX ENERGIES received a new claim for US\$ 131 million based on total importation volumes which is not in line with the Agreement wording (and inconsistent with aforementioned methodology). Claim valorisation was based on turnover (and inconsistent with aforementioned methodology).
- Early 2023, the 2021 claim was updated to US\$ 173 million using the same incorrect methodology.
 - Main part of this claim was based on transit transport for US\$ 147,2 million.

Unfortunately, OILCOM has voluntary misinterpreted the Agreement:

- Rather than using ORYX ENERGIES’ listed customers as per the Agreement, OILCOM based their calculation on the total volumes imported by ORYX ENERGIES in Tanzania through the BPS (Bulk Procurement System) which governs the importation of petroleum product into Tanzania for all Oil Marketing Companies in Tanzania.
- Rather than estimating the shortfall on the actual margin, OILCOM based their claim on 100% of the turnover.

From 2019 to 2023, ORYX ENERGIES tried without success to find a fair and amicable outcome with OILCOM in good faith. Indeed, OILCOM regularly introduced additional points not previously agreed upon by the parties, which hindered the possibility of reaching a consensus.

3. Quantification of the Litigation

ORYX ENERGIES fully rejects the OILCOM calculation based on wrong volumes and on turnover.

ORYX ENERGIES mandated FTI CONSULTING (initially named Forensic Technologies International, headquartered in Washington, D.C), a worldwide renown independent expert specialized in:

- Valuation issues such as quantification of damages.
- Claims in international commercial and investment disputes.
- Accounting issues and post-transaction disputes.

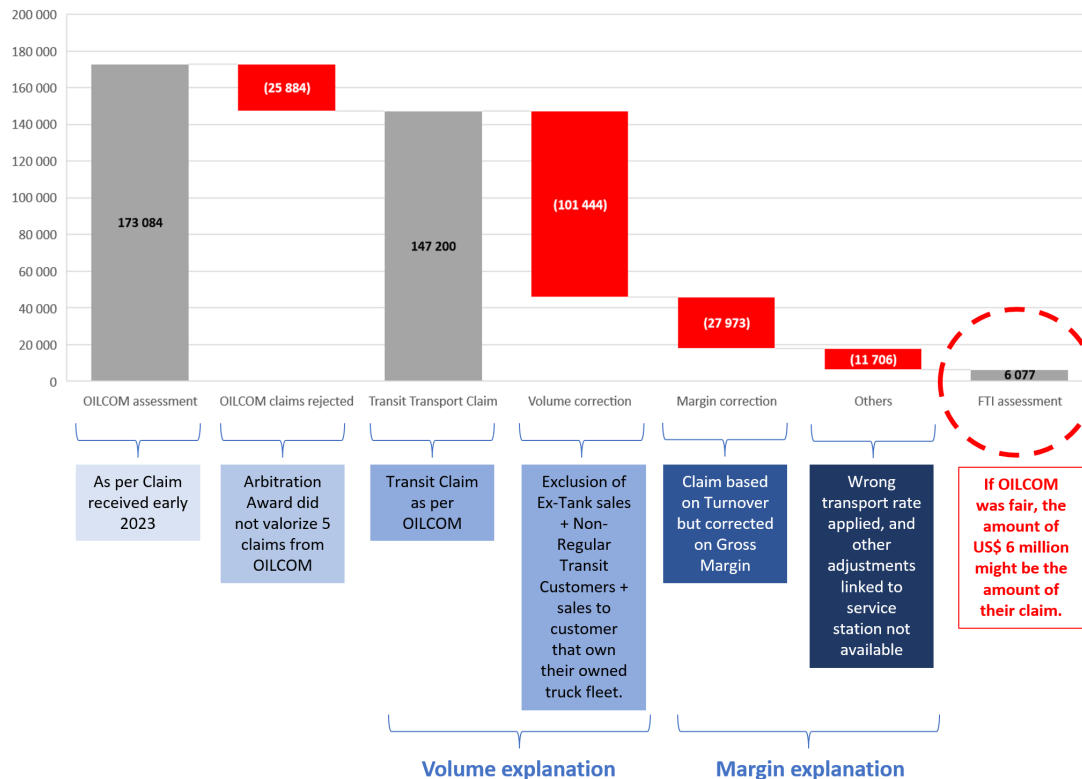
FTI CONSULTING employs more than 7’700 staff in 31 countries and is one of the largest financial consulting firms worldwide. The firm was involved in the Lehman Brothers and General Motors bankruptcies, the investigation into

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the Bernard Madoff fraud, arbitration Bush v. Gore, etc. As of January 2020, FTI CONSULTING had the largest restructuring business in the US. It has been founded in 1982 by Joseph Reynolds and Daniel Luczak, to provide expert witnesses for litigation and provide visual presentations to demonstrate complex technical issues for juries. FTI CONSULTING has a duty of impartiality and offers an independent view despite the mandate by ORYX ENERGIES. As per the applicable laws and regulations, ORYX ENERGIES was permitted to call upon FTI CONSULTING as a witness.

FTI CONSULTING highlighted the way OILCOM's claim is overestimated as per bridge below:

Transit transport - Claim from January 2017 to February 2023



The Agreement includes a catch-up clause which allows both parties the right to compensate volumes of transport not achieved during one year with any surplus during the remaining years of the Agreement. ORYX ENERGIES confirms, as of today, due to breaches by OILCOM, the amount of US\$ 6 million is **zero due to catch-up already done**. Indeed, OILCOM was supposed as per contract to transport ORYX ENERGIES' products with neutral trucks (without logo) and with GPS tracking system and without subcontracting transport.

Two examples to illustrate how OILCOM inflated artificially the claim on Transit destination without taking into account legal and business constraints:

- DELTA (Zambia client) 2017-2023: $622'500 \text{ m}^3 \times 40\% \times \text{turnover} = \text{US\$ } 37 \text{ million}$.
- NOCMA (Malawi client) 2017-2023: $389'300 \text{ m}^3 \times 40\% \times \text{turnover} = \text{US\$ } 30 \text{ million}$.

Meaning US\$ 67 million whereas this amount must be zero as these customers are not part of the Agreement.

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4. *Arbitral Award*

On 30 November 2023, the tribunal awarded US\$ 132 million to OILCOM considering that the volume basis was correct, and that the shortfall represented 90% of the turnover, which is irrelevant as Gross Margin represented approx. 30% (as per OILCOM communication on 14/05/2016 during contract negotiations) and which is in contradiction with methodology used by OILCOM in their claim of May 2019. **In reality, the entire profession agrees on the fact that the Gross Margin of transporters is around 5% which is very far from the 100% turnover claimed by OILCOM. This 5% percentage can be verified in their financial statements.**

In addition, the tribunal awarded US\$ 20 million to OILCOM as general damages. The Tribunal granted interest on the above awarded amounts at a rate of 5% per annum from the date of the claim to the date of the Arbitral Award, and thereafter, an interest of 3% per annum from the date of the Arbitral Award to the date of full satisfaction of it. This brings the total amount of the award to approx. US\$ 174 million which is totally aligned with the claim received in 2023. The arbitration between ORYX ENERGIES and OILCOM faced several procedural issues listed below:

- The Arbitral Tribunal decided to exclude ORYX ENERGIES's expert witness report by FTI CONSULTING (in contradiction with applicable laws and regulations).
- The Arbitral Tribunal refused to nominate a local expert to examine the quantum of the damages despite the complexity of the matter.
- The composition of the Arbitral Tribunal was not in accordance with the law because one of the arbitrator's (nominated by OILCOM) impartiality and independence has been challenged and is still a subject of an appeal in the Court of Appeal. The arbitrator in question acted as a consultant for OILCOM as stated in his *curriculum vitae*.
- The Arbitral Award is brief, superficial, and containing errors in fact in its presentation and argument analysis. ORYX ENERGIES's counterclaims were inadequately addressed, raising questions about due process and fairness.