
J. WILLIAM ROWLEY KC - SEPARATE OPINION ON QUANTUM

1. Although it would not have been my preferred approach, it may not be unreasonable in this case to use a weighted average of different valuation methodologies to measure Claimant's loss. I therefore accept its use. However, I am unable to agree with the relative weightings assigned by the majority to the five methodologies in issue. Had I been sitting alone, and been inclined to use a weighted average, I would have given the valuations resulting from the five contending methodologies the weightings set out in the JWR column below. These adjustments to the majority's weighting would increase the capital value of Claimant's entitlement to damages (without interest) from \$207.8m to \$288.34m.

Methodologies	Majority's weighting	JWR Weighting
1. DRC, \$421.1m	10%	40%
2. Book value, \$164.6m	30%	20%
3. Adjusted Auction Price, \$176.4m	30%	20%
4. Listed share price, \$114m	10%	05%
5. DCF, \$259.9m	20%	15%

DRC Weighting

2. I would have increased DRC from 10% to 40% for several reasons. The remarkably low 10 % weighting given to the DRC valuation by the majority was stated to be: (a) "influenced" by the fact that Mr Lapuerta's calculation of the relevant DRC indicated "...a value which is at the far end of the spread of potential values..."; and (b) the uncertainty that the Russian regulatory system would accept this value in establishing Krymenergo's tariff.
3. As to (a), the fact that the use of a DRC produces the highest valuation has no relevance to its weighting. Weighting has to do with relative appropriateness of the methodology employed and its execution, not the valuation it produces. Here, the record shows that a determination of Krymenergo's FMV at the Valuation Date based on the DRC of its Crimean distribution assets was highly appropriate. It is not in issue that DRC is frequently used to value electricity distribution assets, and to re-value inappropriate book-values (CEER); it is also accepted as a proxy for FMV in this industry. Moreover, it is used routinely by regulators to establish the RAB for electricity distributors. Mr Lapuerta's calculation of Krymenergo's DRC as at the Valuation Date was based on a previous valuation done by Deloitte in 2013 of the DRC of Krymenergo's distribution assets. That valuation was done in accordance with Ukraine's regulatory regime and in the ordinary course of Krymenergo's business before Russia's annexation of Crimea. Importantly, the

accuracy of Deloitte's and Mr Lapuerta's calculations of the DRC was not contested by Respondent's experts. I consider it unacceptable to give this valuation the same 10% weighting that the majority assigns to Respondent's share price valuation, which for reasons below, I consider to be an extremely poor proxy for the FMV of Krymenergo on the Valuation Date.

4. As regards (b), a degree of uncertainty always exists as to the future and the uncertainty here was based solely on the opinions of Russia's valuation experts as to the likely behaviour of the regulator. But expert assumptions require to be assessed against the regulator's actual practice. And Russia offered no evidence from its own electricity regulator concerning its use or non-use of DRC in establishing RAB for tariff purposes.
5. In these circumstances, to give this valuation the same 10% weighting that the majority assigns to Respondent's share price valuation is unsupported and unsupportable. Where, as here, only a tiny fraction of Krymenergo's shares (less than 0.08%) were traded on a daily basis, no commercial player *i.e.*, (a fair value vendor or purchaser) would consider Krymenergo's market capitalisation to represent the company's FMV.

Book Value Weighting

6. I would have assigned book value a weighting of 20% rather than the 30% top weighting assigned by the majority. Book value is almost never reflective of the FMV of a company's assets. CEER says that book values should be revalued annually in this business (which was not done here).

Adjusted Auction Price

7. I would have moved the Adjusted Auction Price down from 30% to 20%. There were only two bidders in the auction, mainly because of the very strict requirements to qualify as a bidder. The fact that few bidders could qualify necessarily implies that the price achieved at auction, even after the adjustments made by the majority, does not qualify as an FMV. The Tribunal's job is to come to a value which best approximates FMV where these restrictions would not apply.

Listed Share Price

8. Given Krymenergo's miniscule, traded volumes (less than 0.08%), and the absence of any liquidity, it is hard to justify weighting this methodology at all. In these circumstances, I would have been hard pressed to have given it a 5% weighting.

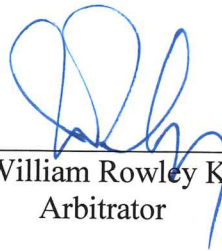
DCF Weighting

9. The majority considers that Krymenergo's business is well suited to the application of a DCF methodology and that Mr Lapuerta's DCF valuation deserves a 20% weighting. However, the majority also concludes that "...any prediction of [Krymenergo's] tariff-based income in a situation as fragile as that of Crimea in 2015 was fraught with uncertainties." To my mind, the inability to establish the impact of regulation on future cashflow with a minimum of uncertainty (a key

requirement set out by the tribunal in the *Rusoro* case, see *infra* fn.860) suggest a lower than the 20% weighting given by the majority. I would have assigned it a maximum of 15%.

Location: The Hague (Netherlands)

Date: 1 November 2023

A handwritten signature in blue ink, consisting of several loops and a long tail, positioned above a horizontal line.

J. William Rowley KC
Arbitrator