



# Expertise in Energy Disputes

EUROPE, MIDDLE EAST & AFRICA



E N E R G Y

EXPERTS WITH IMPACT™



Upstream  
Oil & Gas



Gas  
Pricing



Midstream  
Oil & Gas



Conventional  
Electricity  
Generation



Clean  
Energy



Regulated  
Networks



Retail

VALUATION

ECONOMICS

ACCOUNTING

TRANSACTION

REGULATION

CONSTRUCTION

ENGINEERING

ANTITRUST

# Our Energy Team: What Makes Us Different

Our energy team is home to world-class energy economists, industry strategists, risk analysts, engineers, former investment analysts and former regulators who provide decisive economic and financial analysis to the energy industry across the value chain. Our team is engaged on 80+ new assignments every year, working at the forefront of economic issues driving commercial and regulatory changes in the sector.

The team is formed from experts from both FTI Consulting and Compass Lexecon, who provide clients with deep expertise in the electricity, clean technology (which includes solar, wind and biomass), oil and natural gas sectors, and has a track record of bringing our capabilities to bear in contentious settings.

Our experts have provided testimony before a range of court and arbitration jurisdictions, competition inquiries, and government panels. This includes some of the largest energy-related disputes in the world, often involving assets and valuations in the billions of dollars.

## Independent Recognition



### Expert Witness Power Index

- FTI Consulting and Compass Lexecon ranked #1 and #2 respectively (2021–2022)
- FTI Consulting’s experts appeared in more hearings and were cross-examined significantly more times than any other expert firm



12 of our EMEA energy experts are listed by *Who's Who Legal*

52 of our experts are listed as an Arbitration Expert Witness by *Who's Who Legal*

21 of our experts have been recognised in the Commercial Litigation listing by *Who's Who Legal*

# Upstream Oil & Gas

Companies with oil and gas assets require an in-depth understanding of the energy market shifts that affect their holdings, including macroeconomic conditions and the regulatory environment. The valuation of upstream assets also depends crucially on their location, their geologic setting and the fiscal terms of their contracts. Our professionals have deep industry experience, including former sector investment analysts and upstream contract negotiators, our professionals understand the key drivers of the value of oil and gas assets.

## Valuation of Damages

We provide valuation assessments and expert testimony in investment and commercial disputes. These include expropriation, lost profits, post-transaction and shareholder disputes. We frequently bring our oil and gas market expertise and expert witness pedigree to bear on multibillion-dollar oil and gas industry disputes.

## Investigations

We support clients with a range of litigation-related investigative capabilities in the oil and gas sector. We can assist with complex accounting and reporting requirements that may arise outside the normal course of business. Through our intelligence capabilities, we can also identify witnesses, trace and recover assets, and investigate beneficial ownership.





## CASE STUDY

### Exploration and Production Contract in North Africa

#### SITUATION

A North African state-owned oil and gas company suffered from a lack of investment from its international partner for the development of oil and gas fields. The state-owned company terminated the contract and claimed for loss of profits resulting from the inactions of its partner.

#### OUR ROLE

FTI Consulting's expert, engaged by the State-owned company, valued the lost profits suffered by the company due to the absence or delay of development of the oil and gas fields. The expert had to consider various scenarios for the future development of the fields and to model the different fiscal regimes applicable in the different scenarios considered. The expert had to take into account the new contract signed by the state-owned company with a new international partner for the development of some of the fields covered by the initial contract. The expert also had to evaluate, in the alternative, what were the sunk costs that the co-investor should reimburse.



## CASE STUDY

### Pipeline Concession Agreement – South America

#### SITUATION

Our client, a European gas network owner and operator, had its South American gas pipeline concession contract terminated by the state during its construction phase. Our client initiated an investment arbitration against the state.

#### OUR ROLE

FTI Consulting's role was to provide an expert report on market issues and practices in gas pipeline investment and financing. Our experts provided an opinion on the regulatory framework applicable and the financial structure of the project (project financing). Our experts based their opinion on their personal and direct experience working on similar projects and on extensive research into capital-intensive projects across the world. Our experts also provided evidence on the reasonableness of compensating the investors and on the value of the project in its construction phase.



## CASE STUDY

### Foreign Investors v. Republic of Kazakhstan

#### SITUATION

The client, foreign investors in Kazakhstan, had contracts with the government to explore and extract hydrocarbons from various fields in Western Kazakhstan. These contracts and associated assets were expropriated by the government.

#### OUR ROLE

FTI Consulting's expert was asked to consider their value for purposes of quantifying the damages to the investors. Our expert worked alongside petroleum engineering experts to develop discounted cash flow models for the producing properties and reviewed comparable transactions and companies to assess the reasonability of his conclusions.

A Tribunal found that the investors' assets had been expropriated and awarded damages that were consistent with the evidence presented by our expert.



# Gas Pricing

As the pricing of long-term gas supply contracts in Europe and Asia is increasingly indexed to hubs, there has been a flood of disputes relating to the pricing of wholesale pipeline gas and liquefied natural gas (“LNG”). Using their extensive knowledge of gas contract negotiation, commercial strategies and market drivers, our professionals have provided expert testimony in **more than 20 disputes related to gas and LNG pricing over the past 3 years**, with billions of dollars at stake.

## Understanding the Specifics of Gas Pricing

Our experts have direct experience of commercial decision-making relating to natural gas, having assisted gas and LNG clients in their pricing strategies (on liquid and illiquid hubs), as well as in their actual supply contract negotiations with counterparties. We bring this expertise to bear in contentious settings, to provide industry-specific financial, accounting and economic analyses.

Our specific gas expertise has been tested and proven in more than 20 international arbitrations and national court disputes that have focused on the core commercial topics of the value of gas or LNG, as well as the value of flexibility in delivery point and delivery time.



## CASE STUDY

### Italian Gas Price Dispute

#### SITUATION

FTI Consulting's experts were instructed by a seller in a gas pricing dispute under a long-term contract with an Italian buyer. One of the main issues was whether the contract price should be benchmarked against gas prices in Northwest Europe, or against gas prices in the higher-priced Italian market.

#### OUR ROLE

We demonstrated that the purpose of the contract was to supply the Italian market, and also that it was more flexible, and therefore more valuable, than other long-term contracts supplying the Italian market. The Tribunal agreed with our evidence and decided in favour of the seller.



## CASE STUDY

### Index Change in Gas Price

#### SITUATION

Further to a change in a set of statistics published by a price reporting agency, one of the sellers under a joint-sales agreement expected such change to be implemented under the long-term gas sales agreement in force with a major gas company in Southeast Asia.

#### OUR ROLE

FTI Consulting supported the buyer in its claim that the gas price should not be affected by the change referred to, as per the contractual terms. Our expert opined on industry practice and standards in similar or comparable circumstances and on the key issue of the economic balance of the contract.



## CASE STUDY

### Long-Term LNG Contract in Southern Europe

#### SITUATION

FTI Consulting and Compass Lexecon experts were instructed by a supplier of LNG to Southern Europe to assess whether changes in market conditions were sufficient to trigger a price review.

#### OUR ROLE

We evaluated the extent to which gas-to-gas competition arose over the review period, and the extent to which this had an effect on the market value of gas. To assess changes in market conditions, we analysed several different factors including market liberalisation, the development of gas trading hubs and changes in the demand-supply balance of gas in the specific country and in Europe more generally.



## CASE STUDY

### Central and Eastern European Gas Contract

#### SITUATION

Compass Lexecon's experts were instructed by a seller in a price dispute relating to a shareholders' agreement between the seller and a buyer of natural gas in which the seller had a financial interest. The buyer claimed that the price charged by the seller was inconsistent with the commitment to a fair price in the shareholders' agreement.

#### OUR ROLE

We performed a detailed analysis of the prices and costs of competing fuels for each relevant consumer group, with particular focus on the market conditions of the country in question and the alternatives available. Our analysis showed that the price was in fact fair, and as a result the award dismissed the opposing expert's analysis and the claimant's case.



## CASE STUDY

### Gas Price Evolution Burden Sharing

#### SITUATION

FTI Consulting's experts were instructed by a supplier in a price dispute relating to a long-term gas supply agreement. In line with the requirements of the price review provisions of the contract, we evaluated the extent to which gas-to-gas competition arose over the review period, and the extent to which this had an effect on gas prices in the buyer's markets.

#### OUR ROLE

We further commented on how the impact of gas-to-gas competition could be shared between the buyer and seller to comply with the terms of the contract. Our analyses included an assessment of the development of gas prices in a hypothetical scenario in which gas-to-gas competition had not developed and provided estimates of the opportunity cost of gas to the seller and the buyer.



## CASE STUDY

### Storage Contract Arbitration in the Austrian Market

#### SITUATION

An expert from Compass Lexecon provided economic analysis of price formation and competition in the European gas storage market, in an arbitration of a long-term contract in Austria.

#### OUR ROLE

Inter alia, we used econometric analysis to show that the observed high correlation between prices at the Austrian CEGH and other European gas hubs was not just driven by common cost and demand drivers but also by effective cross-border arbitrage.

# Midstream Oil & Gas

Evolving markets have led to renewed investment in connecting infrastructure between producing and consuming regions. Our professionals have been engaged as independent experts in multiple cases with damages exceeding USD 1 billion across Asia, Europe, Africa and the Americas in disputes involving oil and gas pipelines, LNG infrastructure, storage assets and oil refineries.



## CASE STUDY

### Middle Eastern Gas Pipeline

#### SITUATION

Experts from FTI Consulting and Compass Lexecon were engaged to assess losses to a buyer of gas in the Middle East as a result of pipeline delivery failures, tax exemption revocations and a significant contract amendment.

#### OUR ROLE

Our analyses focused on in-depth analyses of gas price and sales volume projections in specific Middle Eastern markets to determine losses running to several billion dollars.

We provided eight different expert reports and testimony at hearings in front of four different international arbitration forums, including the ICC, ICSID and the Cairo Regional Centre for International Commercial Arbitration.

#### OUTCOME

The awards made to date have largely been in line with our analysis of the markets for the affected gas and our valuation of the associated losses.



## CASE STUDY

### Delay in an LNG Plant

#### SITUATION

A state-owned energy company needed to evaluate its lost profits resulting from the delayed construction of an LNG liquefaction terminal in Northern Africa.

#### OUR ROLE

Relying on the experience of its experts, who computed the potential supply for LNG from the plant, FTI Consulting estimated the counterfactual profit of the plant. Considering different scenarios of LNG exports based on publicly available data on prices and the demand of LNG in different regional markets (Asia, Europe), FTI Consulting produced accurate estimations of the loss of profits to be claimed.



## CASE STUDY

### Middle Eastern Oil Refinery

#### SITUATION

FTI Consulting's expert was appointed in an ICC arbitration between a supplier and a producer of petroleum products operating in the mid/down-stream oil and gas industry in the MENA region.

#### OUR ROLE

The case involved the quantification of lost profits arising from alleged breaches of a supply agreement, and the quantification of other heads of loss allegedly suffered by the claimant arising from the alleged breaches.

# Conventional Electricity Production

Fossil fuel and nuclear electricity production still account for the majority of electricity production and its growth worldwide. Building on electricity industry specific skills, our professionals have been retained in all types of electricity production disputes, providing detailed analyses of regulation, pricing and competition in local electricity markets.



## CASE STUDY

### Portuguese Windfall Tax

#### SITUATION

Following the introduction of fuel and electricity taxes in Spain, the Portuguese government considered that these measures led to windfall gains for Portuguese electricity generators in the integrated Spanish-Portuguese market and should be clawed back by government.

#### OUR ROLE

Compass Lexecon experts were engaged by a Portuguese generator to provide a critical review of the government analysis by regulator's proposal and to prepare an alternative quantification of the windfall profits.

#### OUTCOME

Identifying a number of gaps in the analysis of the Portuguese regulator, we eventually estimated a much smaller windfall profit, which was taken into account by the Portuguese regulator and ministry.



## CASE STUDY

### Nuclear Plant Delays

#### SITUATION

Our client was constructing a new power plant for a purchaser in Europe and had experienced severe delays in commissioning, leading to significant cost overruns. The purchaser of the power plant and our client both served multibillion claims.

#### OUR ROLE

We put together a team of economists, forensic accountants and construction experts from FTI Consulting and Compass Lexecon to provide a comprehensive and integrated response to the issues, assessing the lost profits associated with the delays and analysing the claimant's assessment of costs allegedly incurred as a result of the delays, as well as the calculation of contractual indemnities.



## CASE STUDY

### Nuclear Drawing Rights

#### SITUATION

Two European nuclear operators agreed to swap the drawing rights on the energy produced by their respective nuclear plants. One of the operators later contested the payment of nuclear taxes in the country where it has acquired the drawing rights as a result of the swap.

#### OUR ROLE

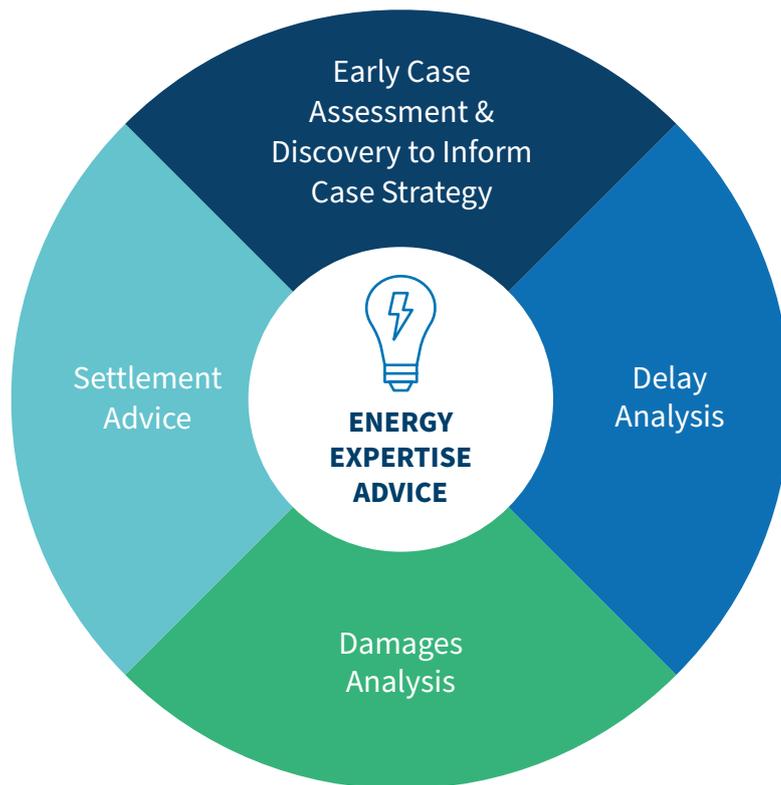
Experts from Compass Lexecon and FTI Consulting were engaged to quantify the financial impact of the pass-on of the nuclear tax between the parties, also analysing the nuclear rents received by the parties and the way the drawing right agreement has impacted these rents.

# Clean Energy

We have deep expertise in technical and commercial disputes in the clean energy sector. Our team includes certified public accountants, certified fraud examiners, engineers, construction experts, valuation experts, economists and insolvency practitioners.

## Technological Issues

Technology has evolved rapidly in the clean energy sector. This has given rise to disputes regarding product design, component and material sourcing, and technical implementation. In addition, disputes have arisen over major construction projects (e.g. large offshore wind farm construction) that have suffered delays, cost overruns and/technical defects, as well as on change to regulatory regimes. Clients rely on our clean energy expertise and extensive industry knowledge for advice during all stages, including early case assessment and discovery, case strategy, delay analysis, damages analysis and settlement advice.





## Economic and Contractual Issues

Many operational and supply contracts in the clean energy sector are 10 to 15 years or longer in duration. Since technologies are evolving so rapidly, the economics of contracts can vary significantly, in some cases giving rise to disputes. We are able to advise our clients during every stage of a breach of contract matter, from early case assessment to damages analysis and expert testimony.

## Regulatory Issues

Governments throughout Europe have incentivised the deployment of renewable energy infrastructure through subsidy schemes. Subsequent changes to those incentive schemes have altered financial returns to investors. In certain countries, where revisions have been applied to pre-existing investments, regulatory changes have given rise to disputes.

Subsidy schemes are also subject to challenge as constituting illegal state aid. Our experts serve client investors in these disputes dealing with retroactive regulatory changes, drawing on their expertise in economics and valuation and their understanding of power markets, technology and clean energy regulation.



## CASE STUDY

### Delay in a Hydropower Project

#### SITUATION

The subsidiary of a national power utility company in Europe claimed for wasted costs and damages against the state due to delays in the construction of a hydropower project. We were engaged by the state to analyse the basis of the claim and its valuation.

#### OUR ROLE

FTI Consulting was engaged as damages expert. Our experts had to review the Claimant's valuation of the project and proposed an alternative methodology. Our analysis demonstrated that the project was not viable economically under various scenarios and concluded that their claim was void.

We responded to the claimant's expert on the specific issue of discount rate, demonstrating on the basis of public evidence that our estimation was conservative and reasonable.



## CASE STUDY

### Solar Regulatory Change Dispute

#### SITUATION

Our client, a large European corporation, invested in a portfolio of renewable power plants in Spain under a regulatory framework that our client believed included explicit guarantees against retroactive changes in the support scheme. The Spanish government subsequently modified the support scheme for existing plants, negatively affecting the value of the client's investments. The client claimed damages from the Spanish government through international arbitration under the Energy Charter Treaty.

#### OUR ROLE

FTI Consulting's experts prepared independent expert reports explaining the general regulatory principles involved in setting renewables support schemes, assessed whether the Spanish government's measures respected these principles, and quantified the damages to the value of the client's assets as a result of the measures adopted.

# Regulated Networks

Markets and network arrangements has increased in sophistication, which has led to the development of complex regulatory arguments and disputes.

Our team of energy regulation specialists has successfully worked inside both regulators and regulated companies, providing expertise to fully address the complexity of the regulatory issues.



## CASE STUDY

### Revisions of Concession Agreement

#### SITUATION

CI-Energies, the agency of the Government of Cote d'Ivoire in charge of the electricity sector, wanted to prepare for the upcoming renewal of the concession agreement between the state and the privatised operator and to advance cost efficiency in the sector.

#### OUR ROLE

Analysing national goals for the electricity sector as well as the current regulatory regime, FTI Consulting provided a benchmark of regulatory regimes applicable to the electricity sector and recommendations defining (1) a new regulatory regime for the privatised operator, and (2) a practical remuneration formula and incentives for electricity sector regulated operators. Additionally, we commented on draft concession agreements, benchmarked the cost of the various segments of the electric industry and helped highlight potential blind spots in the economic regulation envisaged.

#### OUTCOME

FTI Consulting prepared comprehensive reports and supported CI-Energies in its negotiations. The concession agreement incorporating our recommendations was signed and is operational as of 1 January 2021.



## CASE STUDY

### Changes to Regulatory Regime

#### SITUATION

Our client, a major energy networks company, was the owner of specialised electricity transmission assets that had been regulated under bespoke arrangements since the 1990s. These arrangements had lapsed, but our client and the regulator could not agree on the form of new regulations that should apply to the assets.

#### OUR ROLE

Experts from FTI Consulting worked closely with our client to develop options for the new regulatory regime and a negotiation strategy for our client to engage with the regulator.

#### OUTCOME

After extensive engagement, our client and the regulator agreed on a new regime that was mutually acceptable.



## CASE STUDY

### Ancillary Services Remuneration

#### SITUATION

The Belgian energy regulator had decided to change the way it covered the costs of ancillary services provided to the electricity grid. The new charging regime would have allocated costs to electricity producers in lieu of consumers.

#### OUR ROLE

Experts from Compass Lexecon were engaged to verify the consistency of the new charging system with the cost-causation required by framework legislation, and the potential for discrimination between national and international electricity producers.

#### OUTCOME

Our report was directly mentioned by the Brussels Court of Appeal in its decision to annul the new rule put forward by the regulator.

# Retail

The interplay of competition, regulatory intent and innovative energy services has shaped the energy retail landscape over recent years. In this shifting arena, our professionals provide clear and detailed analyses of the effective factors at play in the changing fortunes of retail market players.



## CASE STUDY

### CMA in the UK

#### SITUATION

The Competition and Markets Authority (“CMA”) investigated the energy generation and supply markets in Great Britain. Experts from FTI Consulting and Compass Lexecon were engaged by one of the “big six” energy firms to provide advice on economic and financial matters.

#### OUR ROLE

We used accounting and finance expertise to perform a detailed assessment of economic profitability, and to analyse our client’s pricing policies, cost pass-through, the effects of vertical integration and market remedies.

#### OUTCOME

In response to our work, the CMA revised its analysis of pricing and profitability over the course of the investigation, and did not advocate more intrusive possible remedies, such as price caps for the whole market.



## CASE STUDY

### Retail Electricity Competition Assessment

#### SITUATION

Following concerns raised by the Spanish Competition Authority (“CNMC”), our client requested an assessment of the competitiveness of the retail sector in Spain, including the identification of barriers to competition and possible measures to improve competition.

#### OUR ROLE

Experts from FTI Consulting and Compass Lexecon assessed the evolution of competition market indicators, such as market concentration and margins.

#### OUTCOME

Our analysis concluded that regulatory uncertainty was the main barrier to competition and ruled out significant anti-competitive effects resulting from the existence of vertical integration. We also assessed alternative measures to improve competition by increasing liquidity in the wholesale electricity market.



## CASE STUDY

### End-User Gas Prices

#### SITUATION

In the context of a challenge by a group of large gas users to the National Energy Regulator of South Africa’s (“NERSA”) approval of Sasol Gas charges, experts from our team were retained by Sasol Gas.

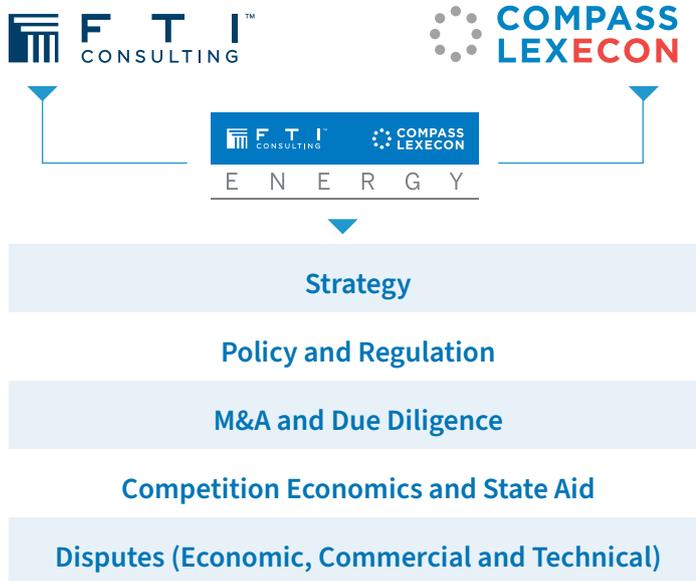
#### OUR ROLE

A team of experts from FTI Consulting and Compass Lexecon provided independent expert evidence on NERSA’s approved methodologies for setting maximum gas prices, the gas trading margin and gas transmission tariffs and their application by Sasol Gas. We also prepared expert reports on the appropriateness of the methodologies and their application in South Africa, which were submitted in support of Sasol Gas evidence to the high court.

# FTI Consulting – Compass Lexecon Energy

A collaboration of energy experts from FTI Consulting and Compass Lexecon.

Compass Lexecon is a wholly owned subsidiary of FTI Consulting, an independent global business advisory firm dedicated to helping organisations manage change, mitigate risk and resolve disputes: financial, legal, operational, political & regulatory, reputational and transactional.



## — CLIENTS INCLUDE

- Oil & Gas Majors
- National Oil & Gas Companies
- Gas Utilities
- Electricity Utilities
- Refining & Marketing Companies
- Energy Infrastructure Companies
- Commodity Traders
- Technology & OEM Providers
- Regulators
- Governments
- Lenders & Investors
- Trade Associations
- Lawyers



# Key Contacts

For further information, please contact:



**LUIS AGOSTI**

Compass Lexecon  
Senior Vice President  
+44 20 3932 9613  
lagosti@compasslexecon.com



**SANJEEV BAHL**

FTI Consulting  
Managing Director  
+44 78 1428 0322  
sanjeev.bahl@fticonsulting.com



**STUART AMOR**

FTI Consulting  
Senior Managing Director  
+44 20 3727 1442  
stuart.amor@fticonsulting.com



**MARK BEZANT**

FTI Consulting  
Senior Managing Director  
+44 20 3727 1047  
mark.bezant@fticonsulting.com



---

**RUXANDRA CIUPAGEA**

Compass Lexecon  
Senior Vice President  
+34 91 586 10 24  
rciupagea@compasslexecon.com



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**EMMANUEL GRAND**

FTI Consulting  
Senior Managing Director  
+33 1 40 08 12 43  
emmanuel.grand@fticonsulting.com



---

**LORENZO COPPI**

Compass Lexecon  
Executive Vice President  
+44 20 3932 9640  
lcoppi@compasslexecon.com



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**THILO KLEIN**

Compass Lexecon  
Executive Vice President  
+44 20 3932 9670  
tklein@compasslexecon.com



---

**RICHARD EDWARDS**

FTI Consulting  
Senior Managing Director  
+44 20 3727 1147  
richard.edwards@fticonsulting.com



---

**JASON MANN**

FTI Consulting  
Senior Managing Director  
+ 44 20 3727 1338  
jason.mann@fticonsulting.com



---

**JULIETTE FORTIN**

FTI Consulting  
Senior Managing Director  
+33 1 40 08 12 41  
juliette.fortin@fticonsulting.com



---

**ESTHER MAYR**

FTI Consulting  
Senior Managing Director  
+44 20 3727 1165  
esther.mayr@fticonsulting.com



---

**ANTON GARCIA**

Compass Lexecon  
Senior Vice President  
+34 91 586 10 05  
agarcia@compasslexecon.com



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**BOAZ MOSELLE**

Compass Lexecon  
Executive Vice President  
+44 20 3932 9682  
bmoselle@compasslexecon.com



---

**JAMES NICHOLSON**

FTI Consulting  
Senior Managing Director  
+65 6506 9889  
james.nicholson@fticonsulting.com



---

**FABIEN ROQUES**

Compass Lexecon  
Executive Vice President  
+33 1 53 05 36 29  
froques@compasslexecon.com



---

**JORGE PADILLA**

Compass Lexecon  
Senior Managing Director of EMEA  
+34 91 586 10 01  
jpadilla@compasslexecon.com



---

**DAVID SEVY**

Compass Lexecon  
Executive Vice President  
+33 1 53 05 36 20  
dsevy@compasslexecon.com



---

**BLANCA PEREA**

FTI Consulting  
Senior Managing Director  
+34 91 524 3887  
blanca.perea@fticonsulting.com



---

**DMITRI PEREKHODTSEV**

Compass Lexecon  
Vice President  
+33 1 53 05 36 24  
dperekhodtsev@compasslexecon.com



---

**JOE PERKINS**

Compass Lexecon  
Senior Vice President and Head of Research  
+44 20 3932 9744  
jperkins@compasslexecon.com



# About FTI Consulting

FTI Consulting is an independent global business advisory firm dedicated to helping organisations manage change, mitigate risk and resolve disputes. Due to our unique mix of **expertise, culture, breadth of services** and **industry experience**, we have a tangible impact on our clients' most complex opportunities and challenges.

Individually, each practice is a leader in its specific field, staffed with experts recognised for the depth of their knowledge and a track record of making an impact. Collectively, FTI Consulting offers a comprehensive suite of services designed to assist clients across the business cycle – from proactive risk management to the ability to respond rapidly to unexpected events and dynamic environments.

## Our Largest Industry Groups



Transportation & Logistics



Financial Services



Real Estate



Healthcare & Life Sciences



Energy, Power & Products (EPP)



Mining



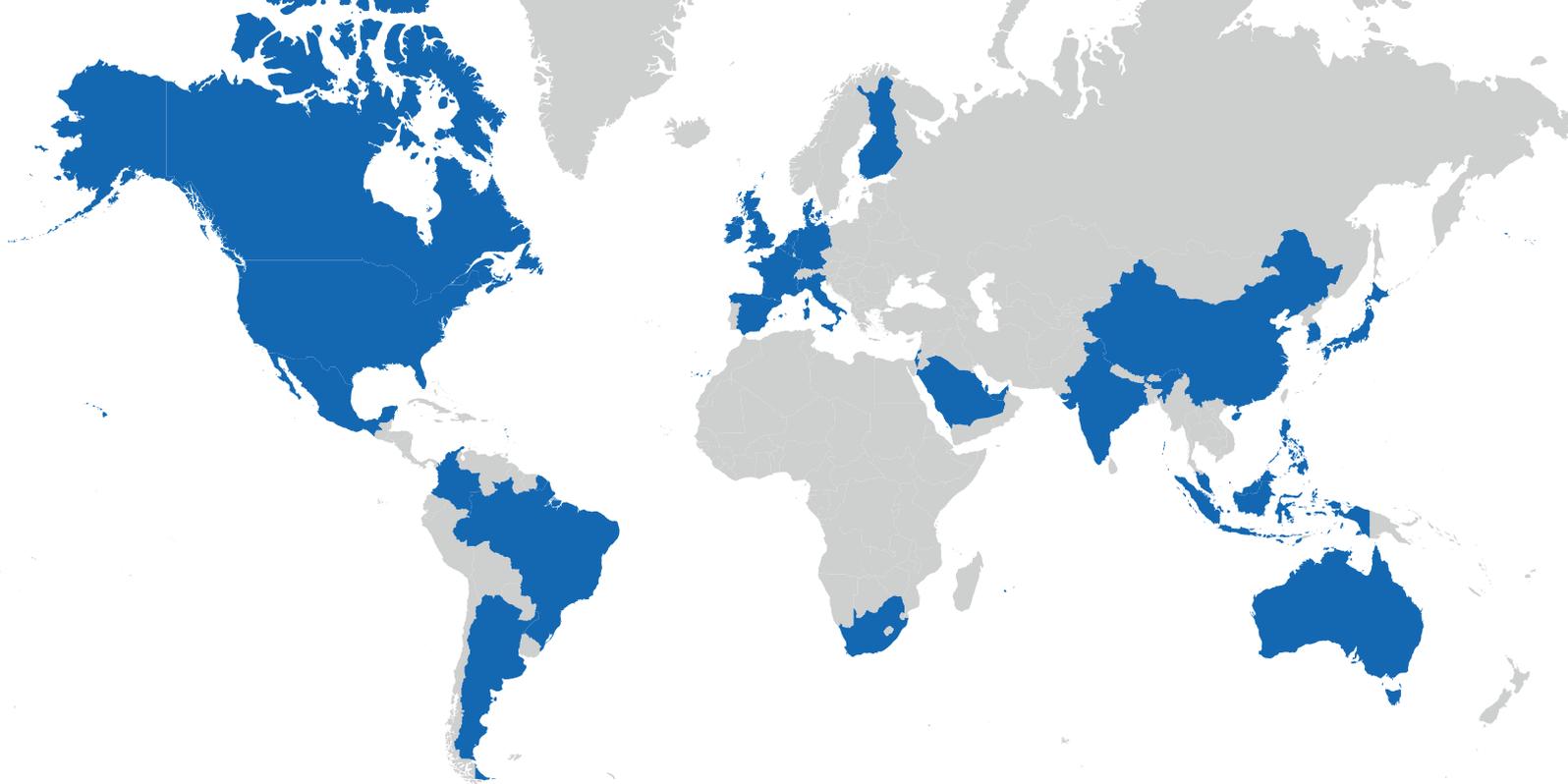
Telecom, Media & Technology (TMT)



Retail & Consumer Products



Insurance



With offices in every major financial centre and every corner of the globe, we successfully serve our clients wherever challenges and opportunities arise.

*\*Number of total shares outstanding as of July 20, 2023, by the closing price per share on July 27, 2023.*

**31**

Countries

**7,800+**

Employees

**1982**

Year Founded

**\$6.0B**

Market Cap\*

**82**

82 of Fortune Global 100 corporations are clients

**99/100**

Advisor to 99 of world's top 100 law firms

## EXPERTS WITH IMPACT™

**FTI Consulting** is an independent global business advisory firm dedicated to helping organizations manage change, mitigate risk and resolve disputes: financial, legal, operational, political & regulatory, reputational and transactional. FTI Consulting professionals, located in all major business centers throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges and opportunities.

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