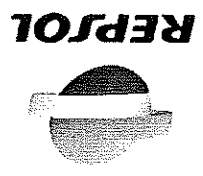
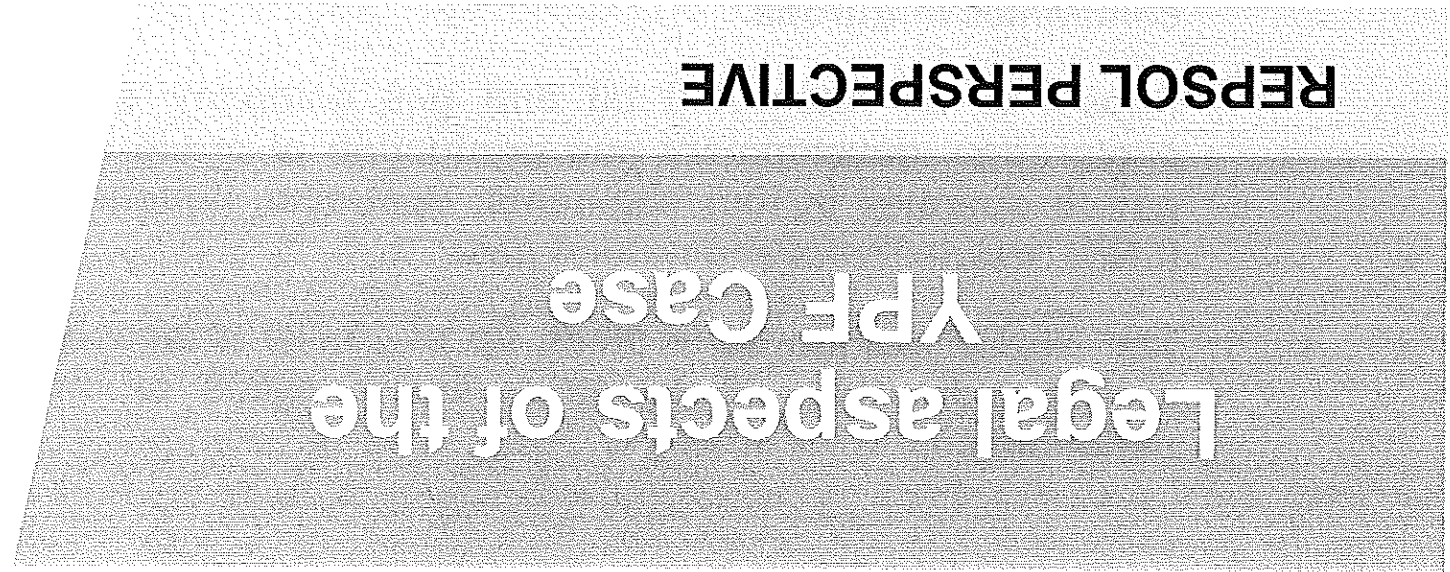


Rethinking International Investment Law: An Investor's Perspective – Repsol/YPF in Argentina

*Miguel Klingenberg
Deputy Secretary General*



The YPF Case – Background



Repsol Highlights

- Repsol is one of the five largest private listed oil and gas companies in Europe.
- Repsol is an integrated oil and gas company engaged in the exploration, development and production of crude oil and natural gas. It operates in four segments: upstream, liquefied natural gas (LNG), downstream and natural gas.
- The Repsol workforce is made up of 25,000 professionals spread across more than 30 countries and consists of more than 36 nationalities.

The YPF Case – Background II

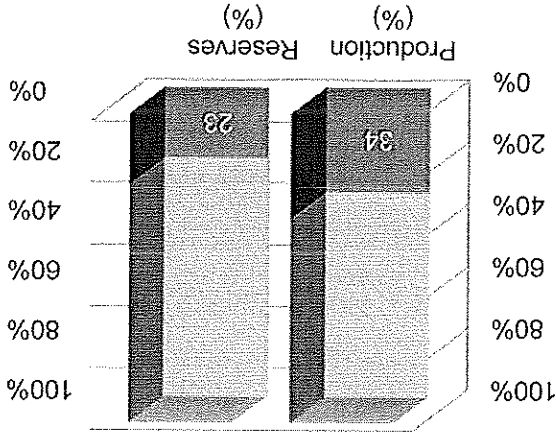
YPF Highlights



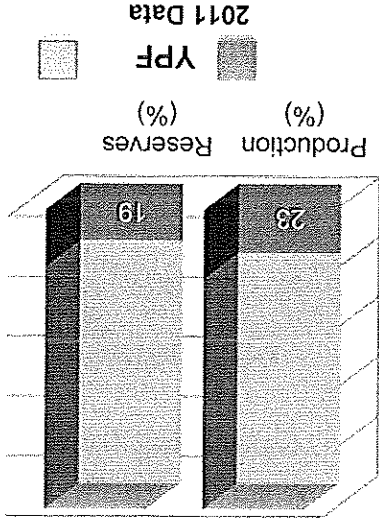
REPSOL

Repsol in YPF
 In 1999 Repsol purchased 97,81% of YPF in a cash payment of over 15 billion dollars
YPF in ARGENTINA

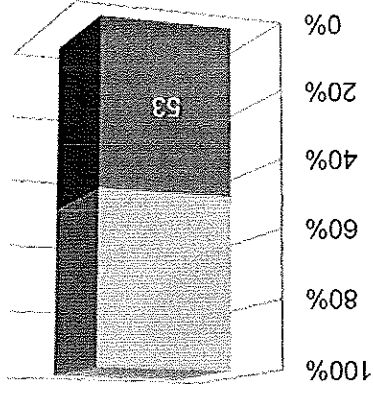
UPSTREAM (as operator)



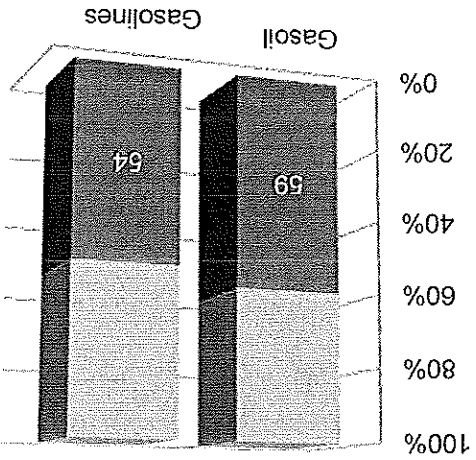
GAS



DOWNSTREAM



Market share (%)



The YPF Case – Background III

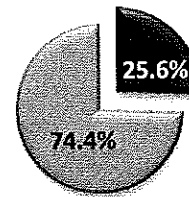


Financial Impact

Financial impact (2011)

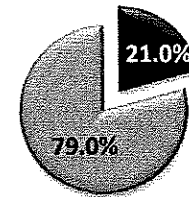
Operating Income

- €1.2bn
- 25.6%



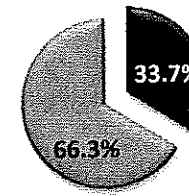
Net income

- €0.5bn
- 21.0%



Investments

- €2.2bn
- 33.7%



■ YPF ■ Repsol ex-YPF

The YPF Case – The Long Sweet Period



REPSOL

➤ Smooth relationship with the Argentinean government as YPF achieves its main objectives:

- Full support to the country as it emerged from its crisis of the early 2000s

- Not only maintaining jobs but even increasing employment from 9,000 employees in 2000 to 16,000 employees in 2011

- Keeping pace with the increased demand on liquid fuels, increasing production to its maximum value and maximising refinery operations as well as helping with the introduction of liquefied natural gas in the country

The YPF Case – The Long Sweet Period



- Significant commitment to “Argentinise” YPF by allowing local investors to invest in YPF (Petersen Group acquired a 25% stake in YPF in 2008)
- It discovered the third largest unconventional hydrocarbons reservoir in the world at the Vaca Muerta formation.
- The Argentinean government retained its Golden Share and presence at the Board of Directors and therefore full control of YPF operations.

➤ ***“The State is in full agreement with the activities that the Company is developing”***

Roberto Baratta – November 2011

**State representative at YPF’s Board of Directors and
National Planning Ministry’s Undersecretary of Coordination**

The YPF Case – The Harassment Campaign

REPSOL



- January 2012: public change of attitude of local authorities = unprecedented campaign of harassment
 - threats of nationalization,
 - sanctioning proceedings,
 - revocation of exploration permits and operation licences, etc.
- Result: appropriation of (corporate and management) control of YPF and the deprivation of Repsol's rights, in violation of the most elementary constitutional guarantees

- Common and concerted harassment strategy between the Central Government and the Provinces against Repsol
- Primary aim: create a political and popular climate hostile to Repsol and conducive to the take-over of YPF through the expropriation of the controlling interest held by Repsol.
- The share price of YPF plummeted more than 50% from January to mid-April 2012

The YPF Case – The Takeover and Seizure



- **16 April 2012:** Argentina's President introduces bill declaring hydrocarbon industry of national public interest and the expropriation of 51% of YPF's share capital from Repsol.

Decree resolves immediate takeover of YPF by appointing a government controller

- **3 May 2012:** Argentinean Congress approves law declaring
 - public interest 51% in YPF S.A.'s share capital, out of the 57% owned by Repsol;
 - immediate seizure of the voting and economic rights attached to those shares
 - two year period to the Argentinean government to initiate the expropriation procedure

- **Over ten months later:** formal title over the YPF shares still with Repsol but:
 - voting and economic rights confiscated
 - no compensation received
 - no process initiated by Argentinean Government.

The YPF Case – The Breach of the Rule of Law



REPSOL

- Breach of the Argentinian Constitution:
 - The right to property
 - Guarantee of equal treatment and non-discrimination
 - Principle of reasonableness
 - Right of due process
- Breach of YPF's By-Laws enacted by Argentina
 - 1993 YPF privatisation and listing in Buenos Aires and New York Stock Exchanges
 - YPF By-Laws: undertaking to launch 100% tender offer in case of re-taking control of YPF
- Breach of the 1991 Argentina – Spain BIT
 - Fair and equitable treatment
 - Non-discrimination
 - Expropriation only with fair compensation

The YPF Case – Legal Strategy



- **Main objective: settlement**
- **Meanwhile: pursuit of all available legal actions in defence of our stakeholders' interest**
- **Focusing on the various breaches of law:**
 - **Argentina: unconstitutionality of the takeover and seizure of the controlling interest of Repsol in YPF**
 - **Spain and US: preventing third parties to take any unlawful advantage from the confiscation**
 - **ICSID: breach of BIT claiming for the restitution of the confiscated stakes, or alternatively a fair compensation and damages**

The YPF Case – International Investment Protection

➤ BITS and international arbitration:

- Very basic principles of protection
- International doctrine, although well-respected, not fully binding
- Expensive and long time-consuming procedure (average between 3 to 5 years)
 - Notice of conflict
 - Registration of Request for Arbitration
 - Constitution of the Tribunal
 - Potential dispute to disqualify appointed arbitrators
 - Potential challenge of jurisdiction
 - Memorials
 - Experts...
- Very complex enforcement challenges



The YPF Case – International Investment Protection



➤ Repsol at ICSID

- Started the procedure in April 2012
- Our request of arbitration was registered by ICSID on 18 December 2012
- Repsol appointed arbitrator in February 2013
- Constitution of the Tribunal pending

➤ Are BITs, the arbitration procedures and, in particular, enforcement of awards in accordance with the current business world?

THANK YOU

REPSOL



