



**ARBITRATION IN
CIS COUNTRIES:
CURRENT ISSUES**

Brussels, June 21, 2012





GENERAL POLICY TOWARDS ARBITRATION IN RUSSIA

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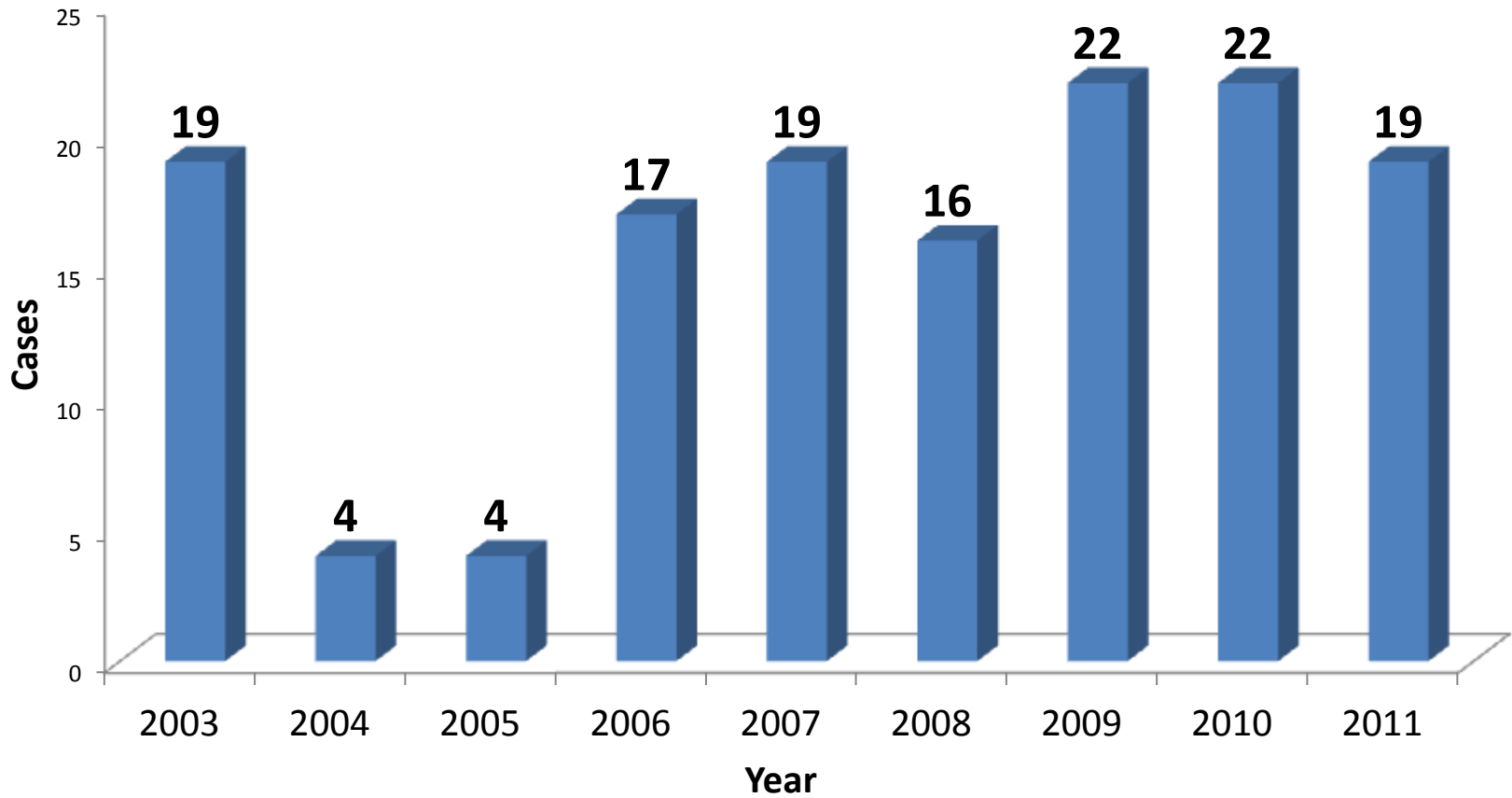
Russian disputes abroad

- ❑ Energy generation & supply
- ❑ Commodities trade
- ❑ Foreign corporate borrowings
 - ❑ English material law
 - ❑ Foreign forums (mainly LCIA)
- ❑ Construction of commercial real estate
- ❑ Industrial upgrades
 - ❑ Supply of equipment
 - ❑ EPC projects
- ❑ Corporate disputes
 - ❑ Telecom, Energy
- ❑ Shipbuilding industry
- ❑ Investment claims

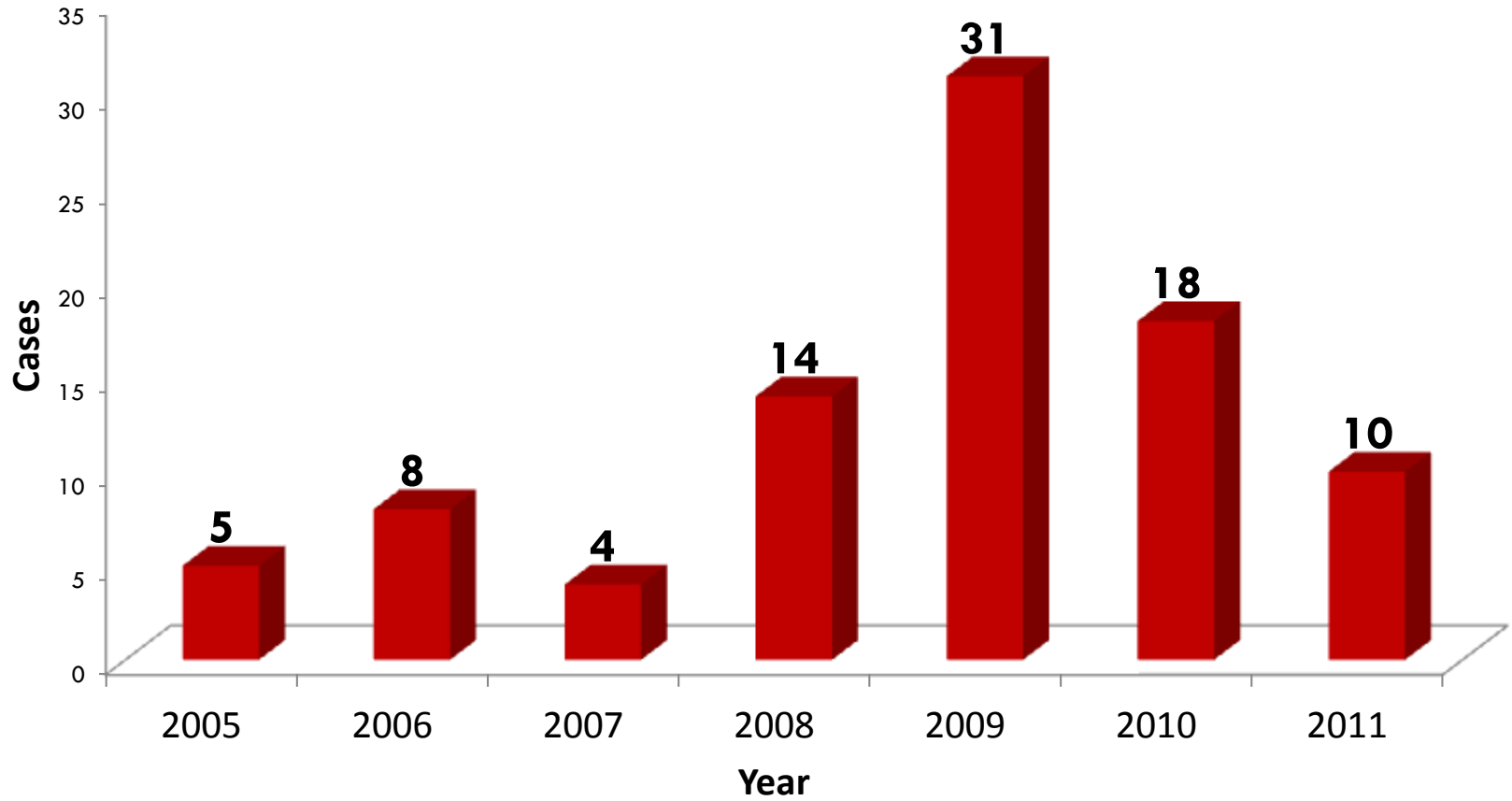
Key parties

- ❑ Gazprom (SCC, ICC)
- ❑ AAR (SCC)
- ❑ Rusal (LCIA, SCC, ICC)
- ❑ Rosneft (SCC)
- ❑ Sistema/MTS (ICC, LCIA, ICSID Additional Facility)
- ❑ Vimpelcom/Beeline (LCIA, SCC)
- ❑ Megafon (SCC)
- ❑ Rosneft (SCC, ICC)
- ❑ NLMK (ICAC, ICC, SCC)
- ❑ Russian Federation (SCC, PCA)

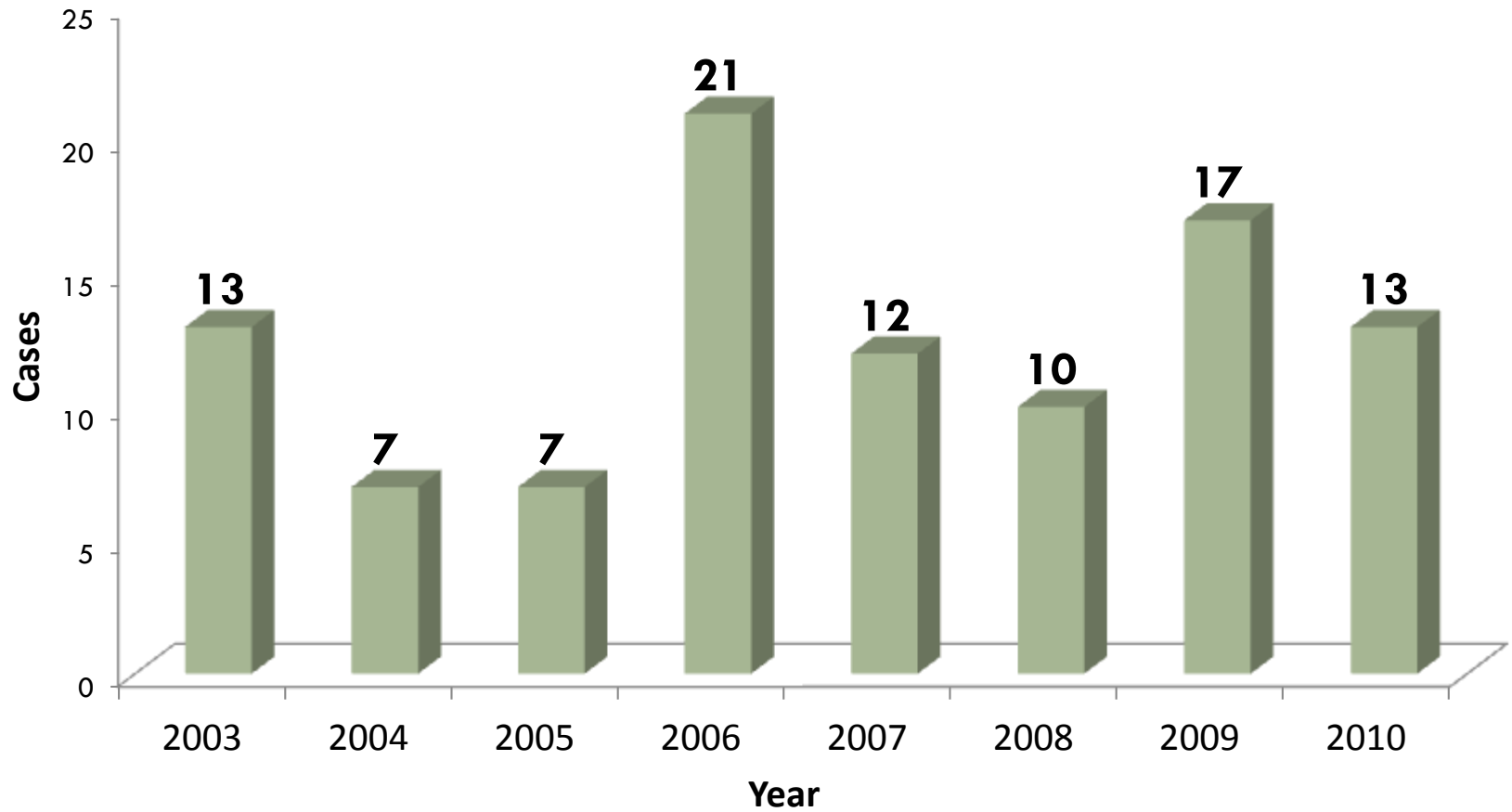
Stats SCC



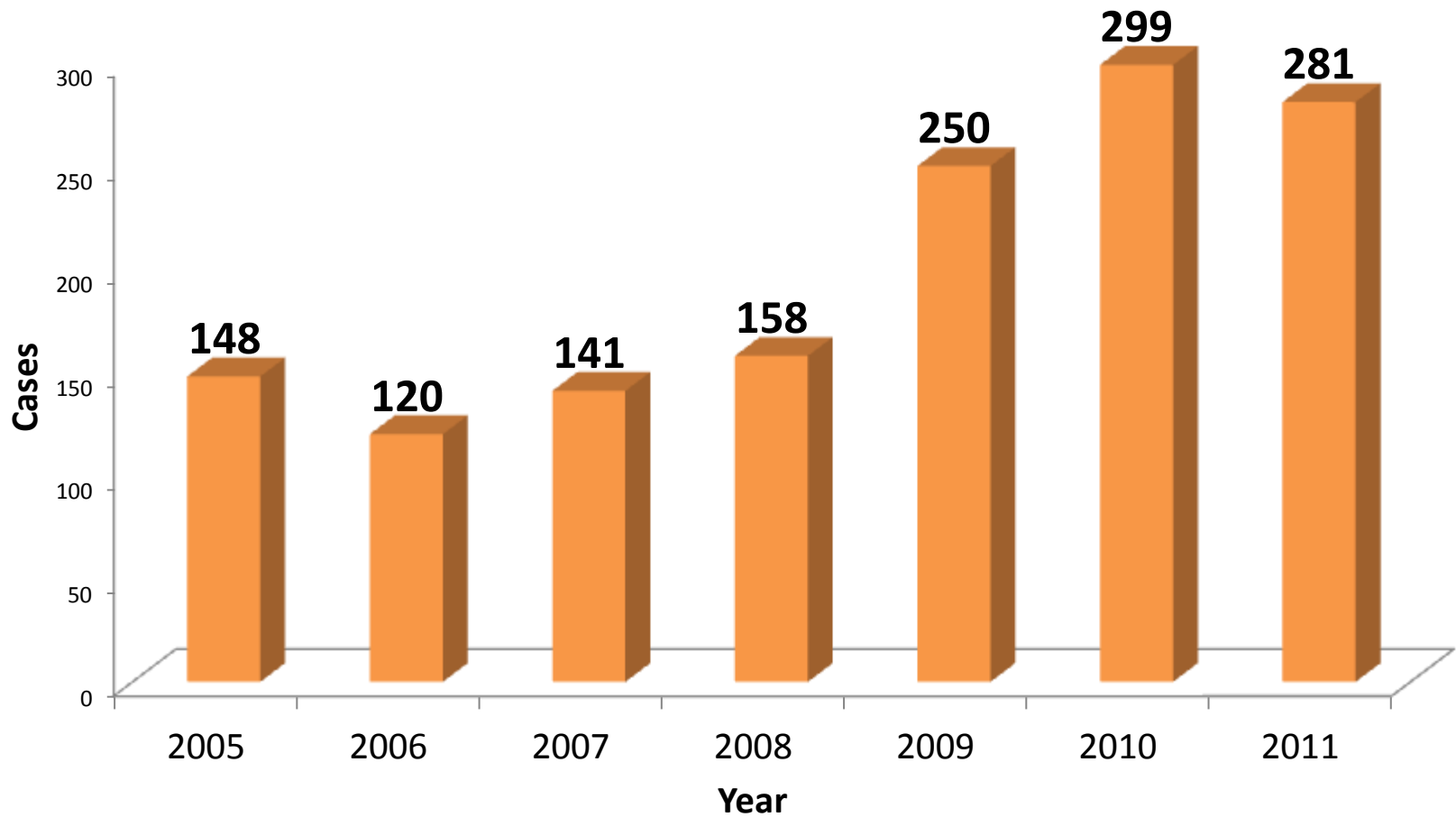
Stats LCIA



Stats ICC



Stats ICAC (MKAS)



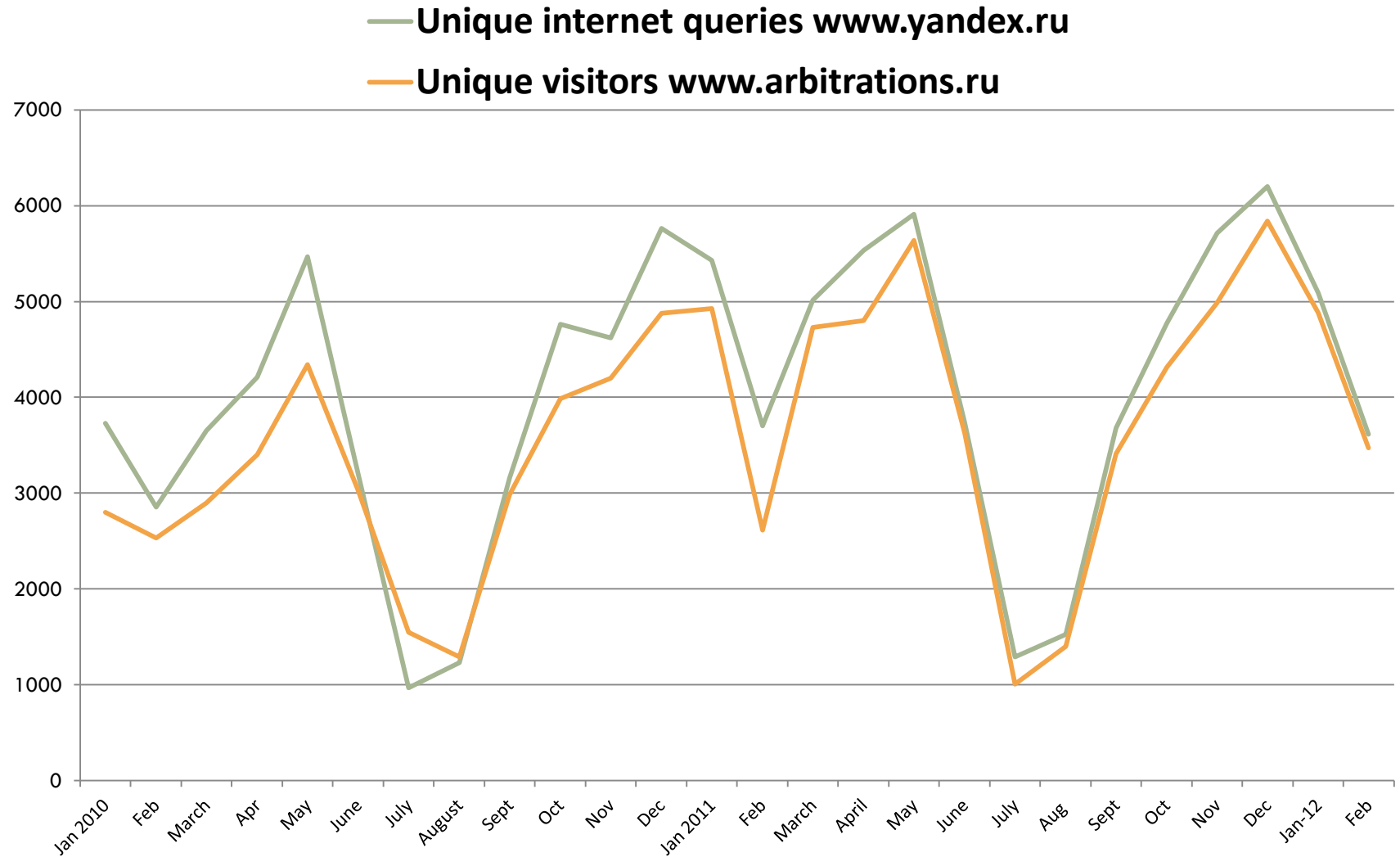
Other Russia-related cases

- Cyprus
- BVI
- Bahamas
- Other

Additional 2-3 Russia-related cases/year per major institution

Total of ~120 institutional cases/year outside Russia

General interest in arbitration



Legal Framework

- ❑ Law “On International Commercial Arbitration” (1993)
 - ❑ Amendments pending second reading in Parliament
- ❑ Code of Arbitrazh (State Commercial) Procedure
- ❑ New York Convention (1958)
- ❑ Genève Convention on International Commercial Arbitration (1961)
- ❑ Moscow Convention (1972), Czech Rep., Slovak Rep. Russia, Bulgaria, Mongolia, Cuba
- ❑ ~ 60 BITs
- ❑ Energy Charter (until 18.10.2009)
- ❑ Not part of ICSID

Arbitrability

All commercial disputes with a foreign element

- ❑ international transactions
- ❑ foreign companies
- ❑ Russian companies with foreign capital

Disputes with public element

- ❑ Title to Real Estate (yes - Constitutional court)
- ❑ Corporate disputes (no)
 - ❑ Option agreements
 - ❑ SHA
 - ❑ SPA
- ❑ IPR (?)

Recent Case Law

- Courts' interim measures in support of arbitration
 - *Edimax Ltd (Cyprus) v Shalva Chigirinsky*

- Impartiality of arbitrators
 - *Erick van Egeraat Associated Architects B.V. (Netherlands) v Capital Group LLC (Russia)*

- Enforceability of 'zombie' awards
 - *Ciments Français (France) v Sibirsky Cement (Russia)*

- Diminishing role of 'public policy' defense
 - *Stena RoRo AB v JSC Baltisky Zavod*

Recent Case Law

- ❑ Optional forum clauses
 - ❑ *Red Burn Capital (UK) v ZAO Factoring Company Eurocommerz (Russia)*
 - ❑ *Sony Ericsson Communication Rus (Russia) v. Russian Telephone Company (Russia)*

- ❑ Arbitrability of real estate disputes
 - ❑ *Constitutional court*

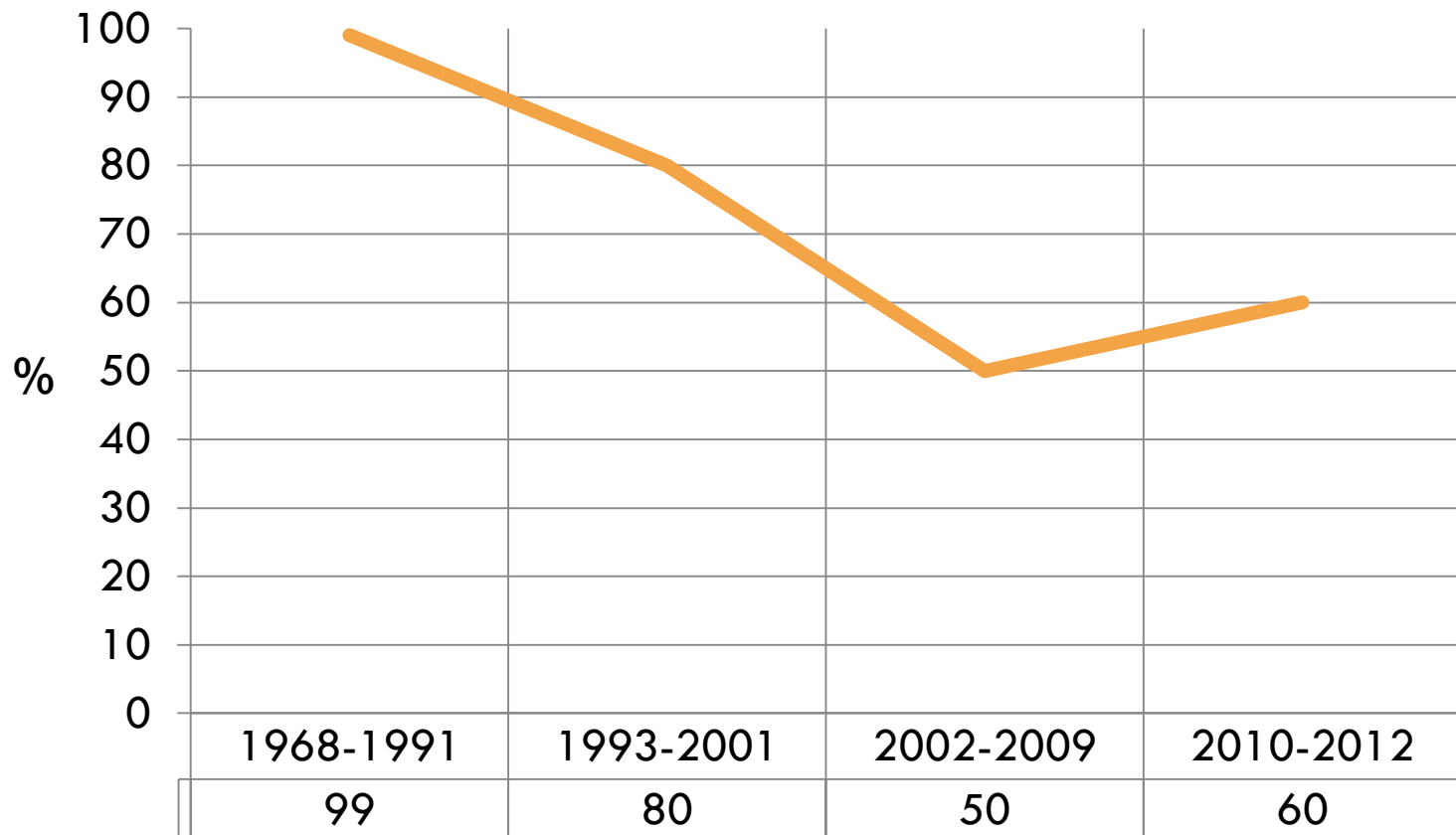
- ❑ Award enforcement limitation period – 3 years
 - ❑ *Constitutional court*

Translated case law at www.arbitrations.ru

Enforcement stats

- ❑ No official stats
- ❑ Earliest known case
 - ❑ *Ingosstrakh (USSR) v. Aabis Rederi (Norway) and Sovfrakht (USSR)*, 6 May 1968, Moscow city Court
- ❑ Historical periods
 - ❑ 1958 – 1991 (USSR)
 - ❑ 1993 – 2001 (Courts of common jurisdiction)
 - ❑ 2002 – 2008 (Arbitrazh courts – phase I)
 - ❑ 2009 – 2012 (Arbitrazh courts – phase II)

Successful enforcements (approx.)



Recent Trends

- ❑ Number of arbitrations increased
- ❑ Most valued disputes heard abroad
- ❑ Enforcement is being liberalized
- ❑ Court's IMP in support of arbitration abroad
- ❑ No courts' review on the merits
- ❑ Broader arbitrability

Possible State Reaction

- ❑ Amendments to Arbitration Law
- ❑ A new ADR institution
- ❑ A sole judicial supervisory body
- ❑ Optional jurisdiction clauses
- ❑ Anti-suit injunctions by Russian courts
- ❑ Retaining the exclusive jurisdiction for various types of disputes

Thank you!



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