

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Jier Shin Korea Co., Ltd., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, a Stipulation, and a Competitive Impact Statement have been filed with the United States District Court for the Southern District of Ohio in *United States v. Jier Shin Korea Co., Ltd., et al.*, Case No. 2:20–cv–1778. On April 8, 2020, the United States filed a Complaint alleging that between 2005 and 2016, Jier Shin Korea Co., Ltd. (“Jier Shin Korea”) and its president Sang Joo Lee, along with other co-conspirators, conspired to rig bids for Posts, Camps & Stations (PC&S) and Army and Air Force Exchange Service (AAFES) fuel supply contracts with the U.S. military in South Korea, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. A proposed Final Judgment, filed at the same time as the Complaint, requires Defendants to jointly and severally pay the United States \$2,000,000. In addition, Defendants have agreed to cooperate with further civil investigative and judicial proceedings and Jier Shin Korea has agreed to institute an antitrust compliance program.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division’s website at <http://www.justice.gov/atr> and at the Office of the Clerk of the United States District Court for the Southern District of Ohio. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division’s website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Robert A. Lepore, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, 450 5th Street NW, Suite

8000, Washington, DC 20530 (telephone: 202–307–6349).

Suzanne Morris,

Chief, Premerger and Division Statistics.

United States District Court for the Southern District of Ohio Eastern Division

United States of America, Plaintiff, v. Jier Shin Korea Co., Ltd., Jindo Bldg., Room 1405, 37, Dohwa-dong, Mapo-gu, Seoul, South Korea, and Sang Joo Lee, c/o Jier Shin Korea Co., Ltd., Jindo Bldg., Room 1405, 37, Dohwa-dong, Mapo-gu, Seoul, South Korea, Defendants.

Case No. 2:20–cv–1788

Complaint: Violation of Section 1 of the Sherman Act, 15 U.S.C. 1

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable monetary relief and recover damages from Jier Shin Korea Co., Ltd. and Sang Joo Lee for conspiring to rig bids and fix prices, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, on the supply of fuel to the U.S. military for its operations in South Korea.

I. Introduction

1. Since the end of the Korean War, the U.S. armed forces have maintained a significant presence in South Korea, protecting American interests in the region and safeguarding peace for the Korean people. To perform this important mission, American service members depend on fuel to power their bases and military vehicles. The U.S. military procures this fuel from oil refiners located in South Korea through a competitive bidding process.

2. For at least a decade, rather than engage in fair and honest competition, Defendants and their co-conspirators defrauded the U.S. military by fixing prices and rigging bids for the contracts to supply this fuel. Defendants met and communicated in secret with large South Korean oil refiners and other logistics companies, and pre-determined which conspirator would win each contract. Defendants or their co-conspirators then fraudulently submitted collusive bids to the U.S. military. Through this scheme, Defendants reaped supracompetitive profit margins on the fuel delivered to the U.S. military.

3. As a result of this conduct, Defendants and their co-conspirators illegally overcharged American taxpayers by well over \$100 million. This conspiracy unreasonably restrained trade and commerce, in violation of

Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Defendants

4. Jier Shin Korea Co., Ltd. (“Jier Shin Korea”) is a small, privately held logistics company located in Seoul, South Korea. Jier Shin Korea provides logistics services related to the transportation of fuel, petroleum by-products, and other goods. During the conspiracy, Jier Shin Korea partnered with a South Korean oil refiner, Hyundai Oilbank Co., Ltd. (“Hyundai Oilbank”), to supply fuel to U.S. military installations in South Korea, with Jier Shin Korea acting as the prime contractor under the relevant contracts.

5. Sang Joo Lee is the president of Jier Shin Korea. Jier Shin Korea is a closely held firm majority owned by Lee and his family.

6. Other persons, not named as defendants in this action, participated as co-conspirators in the offense alleged in this Complaint and performed acts and made statements in furtherance thereof. These co-conspirators include, among others, GS Caltex Corporation (“GS Caltex”), Hanjin Transportation Co., Ltd. (“Hanjin”), SK Energy Co., Ltd. (“SK Energy”), Hyundai Oilbank, and S-Oil Corporation (“S-Oil”).

7. Whenever this Complaint refers to any act, deed, or transaction of any business entity, it means that the business entity engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs. As president of Jier Shin Korea, Lee knowingly, directly, and substantially participated in the acts of Jier Shin Korea described herein.

III. Jurisdiction and Venue

8. The United States brings this action under Section 4 of the Sherman Act, 15 U.S.C. 4, and Section 4A of the Clayton Act, 15 U.S.C. 15a, seeking equitable relief, including equitable monetary remedies, and damages from Defendants’ violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

9. This Court has subject matter jurisdiction over this action under 15 U.S.C. 4 and 15a and 28 U.S.C. 1331 and 1337.

10. Defendants have consented to venue and personal jurisdiction in this district for the purpose of this Complaint.

11. Defendants or their co-conspirators entered into contracts with the U.S. military to supply and deliver fuel to U.S. military installations in South Korea. Under the terms of these

contracts, Defendants or their co-conspirators agreed that the laws of the United States would govern all contractual disputes and that U.S. administrative bodies and courts would have exclusive jurisdiction to resolve all such disputes. To be eligible to enter into these contracts, Defendants or their co-conspirators registered in databases located in the United States. For certain contracts, Defendants or their co-conspirators submitted bids to U.S. Department of Defense offices in the United States. After being awarded these contracts, Defendants or their co-conspirators submitted invoices to and received payments from U.S. Department of Defense offices in Columbus, Ohio, which included use of wires and mails located in the United States.

12. Through these contracts with the U.S. military, Defendants' activities had a direct, substantial, and reasonably foreseeable effect on interstate commerce, import trade or commerce, and commerce with foreign nations. Defendants' conspiracy had a substantial and intended effect in the United States. Defendants caused U.S. Department of Defense agencies to pay non-competitive prices for the supply of fuel to U.S. military installations. Defendants or their co-conspirators also caused a U.S. Department of Defense agency located in the Southern District of Ohio to transfer U.S. dollars to their foreign bank accounts.

IV. Background

13. From at least March 2005 and continuing until at least October 2016 ("the Relevant Period"), the U.S. military procured fuel for its installations in South Korea through competitive solicitation processes. Oil companies, either independently or in conjunction with a logistics company, submitted bids in response to these solicitations.

14. The conduct at issue relates to two types of contracts to supply fuel to the U.S. military for use in South Korea: Post, Camps, and Stations ("PC&S") contracts and Army and Air Force Exchange Services ("AAFES") contracts.

15. PC&S contracts are issued and administered by the Defense Logistics Agency ("DLA"), a combat support agency in the U.S. Department of Defense. DLA, formerly known as the Defense Energy Support Center, is headquartered in Fort Belvoir, Virginia. The fuel procured under PC&S contracts is used for military vehicles and to heat U.S. military buildings. During the Relevant Period, PC&S contracts ran for a term of three or four years. DLA issued PC&S solicitations listing the fuel

requirements for installations across South Korea, with each delivery location identified by a separate line item. Bidders offered a price for each line item on which they chose to bid. DLA awarded contracts to the bidders offering the lowest price for each line item. The Defense Finance and Accounting Service ("DFAS"), a finance and accounting agency of the U.S. Department of Defense, wired payments to the PC&S contract awardees from its office in Columbus, Ohio.

16. AAFES is an agency of the Department of Defense headquartered in Dallas, Texas. AAFES operates official retail stores (known as "exchanges") on U.S. Army and Air Force installations worldwide, which U.S. military personnel and their families use to purchase everyday goods and services, including gasoline for use in their personal vehicles. AAFES procures fuel for these stores via contracts awarded through a competitive solicitation process. The term of AAFES contracts is typically two years, but may be extended for additional years. In 2008, AAFES issued a solicitation that listed the fuel requirements for installations in South Korea. Unlike DLA, AAFES awarded the entire 2008 contract to the bidder offering the lowest price across all the listed locations.

V. Defendants' Unlawful Conduct

17. From at least March 2005 and continuing until at least October 2016, Defendants and their co-conspirators engaged in a series of meetings, telephone conversations, emails, and other communications to rig bids and fix prices for the supply of fuel to U.S. military installations in South Korea.

2006 PC&S and 2008 AAFES Contracts

18. GS Caltex, SK Energy, Hyundai Oilbank, and Jier Shin Korea (through Lee and other agents) conspired to rig bids and fix prices on the 2006 PC&S contracts, which were issued in response to solicitation SP0600-05-R-0063, supplemental solicitation SP0600-05-0063-0001, and their amendments. The term of the 2006 PC&S contracts covered the supply of fuel from February 2006 through July 2009.

19. Between early 2005 and mid-2006, GS Caltex, SK Energy, Hyundai Oilbank, and Jier Shin Korea met multiple times and exchanged phone calls and emails to allocate the line items in the solicitations for the 2006 PC&S contracts. For each line item allocated to a different co-conspirator, the other conspirators agreed not to bid or to bid high enough to ensure that they would not win that item. Through these

communications, these conspirators agreed to inflate their bids to produce higher profit margins. DLA awarded the 2006 PC&S line items according to the allocations made by the conspiracy.

20. As part of their discussions related to the 2006 PC&S contracts, Jier Shin Korea and other conspirators agreed not to compete with SK Energy in bidding for the 2008 AAFES contract. In 2008, GS Caltex, Hyundai Oilbank, and Jier Shin Korea honored their agreement: GS Caltex bid significantly above the bid submitted by SK Energy for the AAFES contract, while Hyundai Oilbank and Jier Shin Korea declined to bid even after AAFES explicitly requested their participation in the bidding. The initial term of the 2008 AAFES contract ran from July 2008 to July 2010; the contract was later extended through July 2013. As envisioned by the conspiracy, AAFES awarded the 2008 contract to SK Energy.

2009 PC&S Contracts

21. Continuing their conspiracy, Jier Shin Korea and other co-conspirators conspired to rig bids and fix prices for the 2009 PC&S contracts, which were issued in response to solicitation SP0600-08-R-0233. Hanjin and S-Oil joined the conspiracy for the purpose of bidding on the solicitation for the 2009 PC&S contracts. Hanjin and S-Oil partnered to bid jointly on the 2009 PC&S contracts, with S-Oil providing the fuel and Hanjin providing transportation and logistics. The term of the 2009 PC&S contracts covered the supply of fuel from October 2009 through August 2013.

22. Between late 2008 and mid-2009, Jier Shin Korea and other co-conspirators met multiple times and exchanged phone calls and emails to allocate the line items in the solicitation for the 2009 PC&S contracts. As in 2006, these conspirators agreed to bid high so as to not win line items allocated to other co-conspirators. The original conspirators agreed to allocate to Hanjin and S-Oil certain line items that had previously been allocated to the original conspirators.

23. With one exception, DLA awarded the 2009 PC&S contracts in line with the allocations made by Jier Shin Korea and other co-conspirators. Hyundai Oilbank and Jier Shin Korea accidentally won one line item that the conspiracy had allocated to GS Caltex. To remedy this misallocation, Jier Shin Korea, Hyundai Oilbank, and GS Caltex agreed that GS Caltex, rather than Hyundai Oilbank, would supply Jier Shin Korea with the fuel procured under this line item.

2013 PC&S Contracts

24. Similar to 2006 and 2009, Jier Shin Korea and other co-conspirators conspired to rig bids and fix prices for the 2013 PC&S contracts, which were issued in response to solicitation SP0600-12-R-0332. The term of the 2013 PC&S Contract covered the supply of fuel from August 2013 through July 2016.

25. Jier Shin Korea and other co-conspirators communicated via phone calls and emails to allocate and set the price for each line item in the solicitation for the 2013 PC&S contracts. Jier Shin Korea and other co-conspirators believed that they had an agreement as to their bidding strategy and pricing for the 2013 PC&S contracts. As a result of this agreement, they bid higher prices than they would have in a competitive process.

26. However, Hanjin and S-Oil submitted bids for the 2013 PC&S contracts below the prices set by the other co-conspirators. Although lower than the pricing agreed upon by the conspirators, Hanjin and S-Oil still submitted bids above a competitive, non-collusive price, knowing that they would likely win the contracts because the other conspirators would bid even higher prices.

27. As a result of their bidding strategy, Hanjin and S-Oil jointly won nearly all the line items in the 2013 PC&S contracts. As in 2009, S-Oil was to provide the fuel for these line items, and Hanjin was to provide transportation and logistics. Jier Shin Korea and other co-conspirators won a few, small line items; SK Energy won none. DLA made inflated payments under the 2013 PC&S contracts through October 2016.

28. After the award of the 2013 PC&S contracts, Hanjin, S-Oil, and GS Caltex reached an understanding that GS Caltex, rather than S-Oil, would supply Hanjin with fuel for certain line items. Under this side agreement, Hanjin paid a much lower price to GS Caltex for fuel than the price it previously had agreed to pay S-Oil to acquire fuel for those line items. However, the price that Hanjin paid to GS Caltex exceeded a competitive price for fuel.

VI. Violations Alleged

29. The United States incorporates by reference the allegations in paragraphs 1 through 28.

30. The conduct of Defendants and their co-conspirators unreasonably restrained trade and harmed competition for the supply of fuel to the U.S. military in South Korea in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

31. The United States was injured as a result of the unlawful conduct because it paid more for the supply of fuel than it would have had Defendants and their co-conspirators engaged in fair competition.

VII. Request for Relief

32. The United States requests that this Court:

(a) Adjudge that Defendants' and their co-conspirators' conduct constitutes an unreasonable restraint of interstate commerce, import trade or commerce, and commerce with foreign nations in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

(b) award the United States damages to which it is entitled for the losses incurred as the result of Defendants' and their co-conspirators' conduct;

(c) award the United States equitable disgorgement of the ill-gotten gains obtained by Defendants;

(d) award the United States its costs of this action; and

(e) award the United States other relief that the Court deems just and proper.

Dated: April 8, 2020

Respectfully submitted,
FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/ _____
Makan Delrahim,
Assistant Attorney General for Antitrust.

/s/ _____
Bernard A. Nigro, Jr.,
Principal Deputy Assistant Attorney General.

/s/ _____
Kathleen S. O'Neill,
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/s/ _____
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Dated: April 8, 2020

Respectfully submitted,
FOR PLAINTIFF UNITED STATES OF AMERICA:

DAVID M. DEVILLERS,
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By:

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United States District Court for the Southern District of Ohio Eastern Division

United States of America, Plaintiff, v. Jier Shin Korea Co., Ltd. and Sang Joo Lee, Defendants.

Case No. 2:20-cv-1788

Proposed Final Judgment as to Defendants Jier Shin Korea Co., Ltd. and Sang Joo Lee

Whereas Plaintiff, United States of America, filed its Complaint on April 8, 2020, the United States and Defendants Jier Shin Korea Co., Ltd. ("Jier Shin Korea") and Sang Joo Lee, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

Whereas, this Final Judgment does not constitute any evidence against or admission by any party regarding any issue of fact or law;

Now, therefore, before the taking of any testimony and without trial or final adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed*:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and each of the parties. The Complaint states a claim upon which relief may be granted to the United States against Jier Shin Korea and Sang Joo Lee under Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Applicability

This Final Judgment applies to Jier Shin Korea and Sang Joo Lee, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

III. Payments

Jier Shin Korea and Sang Joo Lee jointly and severally shall pay to the United States the total sum of two million dollars (\$2,000,000) over three installments:

(a) Within ten (10) business days of the entry of this Final Judgment, the amount of one million dollars (\$1,000,000);

(b) within one (1) calendar year of the entry of this Final Judgment, the amount of five hundred thousand dollars (\$500,000); and

(c) within two (2) calendar years of the entry of this Final Judgment, the amount of five hundred thousand dollars (\$500,000);

less the amount paid (excluding any interest) pursuant to the settlement agreement attached hereto as Attachment 1. These payments satisfy all civil antitrust claims alleged against Jier Shin Korea and Sang Joo Lee by the United States in the Complaint. Payments of the amounts ordered hereby shall be made by wire transfer of funds or cashier's check. If the payment is made by wire transfer, Jier Shin Korea and Sang Joo Lee shall contact Janie Ingalls of the Antitrust Division's Antitrust Documents Group at (202) 514-2481 for instructions before making the transfer. If the payment is made by cashier's check, the check shall be made payable to the United States Department of Justice and delivered to: Janie Ingalls, United States Department of Justice Antitrust Division, Antitrust Documents Group, 450 5th Street NW, Suite 1024, Washington, DC 20530. In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of default to the date of payment.

Jier Shin and Sang Joo Lee have provided sworn financial disclosure statements ("Financial Statements") to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in agreeing to this Final Judgment. Jier Shin and Sang Joo Lee warrant that the Financial Statements are complete, accurate, and current. If the United States learns of any asset(s) in which Jier Shin and Sang Joo Lee had an interest as of April 8, 2020 that were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by Jier Shin and Sang Joo Lee on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$100,000 or more, the United States may collect the full payments set forth in this section plus one hundred percent (100%) of the value of the net worth of Jier Shin and Sang Joo Lee previously undisclosed. Jier Shin and Sang Joo Lee agree not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorney's fees and expenses.

IV. Cooperation

Jier Shin Korea and Sang Joo Lee shall cooperate fully with the United States regarding any matter about which they have knowledge or information relating to any ongoing civil investigation, litigation, or other proceeding arising out of any ongoing federal investigation of the subject matter discussed in the Complaint (hereinafter, any such investigation, litigation, or proceeding shall be referred to as a "Civil Federal Proceeding").

The United States agrees that any cooperation provided pursuant to the settlement agreement attached hereto as Attachment 1 will be considered cooperation for purposes of this Final Judgment, and the United States will use its reasonable best efforts, where appropriate, to coordinate any requests for cooperation in connection with the Civil Federal Proceeding with requests for cooperation in connection with the settlement agreement attached hereto as Attachment 1, so as to avoid unnecessary duplication and expense.

Jier Shin Korea and Sang Joo Lee's cooperation shall include, but not be limited to, the following:

(a) Upon request, completely and truthfully disclosing and producing, to the offices of the United States and at no expense to the United States, copies of all non-privileged information, documents, materials, and records in their possession (and for any foreign-language information, documents, materials, or records, copies must be produced with an English translation), regardless of their geographic location, about which the United States may inquire in connection with any Civil Federal Proceeding, including but not limited to all information about activities of Jier Shin Korea and present and former officers, directors, employees, and agents of Jier Shin Korea;

(b) Making available in the United States, at no expense to the United States, Jier Shin Korea's present officers, directors, employees, and agents to provide information and/or testimony as requested by the United States in connection with any Civil Federal Proceeding, including the provision of testimony in trial and other judicial proceedings, as well as interviews with law enforcement authorities, consistent with the rights and privileges of those individuals;

(c) Using their best efforts to make available in the United States, at no expense to the United States, Jier Shin Korea's former officers, directors, employees, and agents to provide information and/or testimony as

requested by the United States in connection with any Civil Federal Proceeding, including the provision of testimony in trial and other judicial proceedings, as well as interviews with law enforcement authorities, consistent with the rights and privileges of those individuals;

(d) Providing testimony or information necessary to identify or establish the original location, authenticity, or other basis for admission into evidence of documents or physical evidence produced by Jier Shin Korea or Sang Joo Lee in any Civil Federal Proceeding as requested by the United States; and

(e) Completely and truthfully responding to all other inquiries of the United States in connection with any Civil Federal Proceeding.

However, notwithstanding any provision of this Final Judgment, Jier Shin Korea and Sang Joo Lee are not required to: (1) Request of Jier Shin Korea's current or former officers, directors, employees, or agents that they forgo seeking the advice of an attorney nor that they act contrary to that advice; (2) take any action against Jier Shin Korea's officers, directors, employees, or agents for following their attorney's advice; or (3) waive any claim of privilege or work product protection.

The obligations of Jier Shin Korea and Sang Joo Lee to cooperate fully with the United States as described in this Section shall cease upon the conclusion of all Civil Federal Proceedings (which may include Civil Federal Proceedings related to the conduct of third parties), including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in each such Civil Federal Proceeding, at which point the United States will provide written notice to Jier Shin Korea and Sang Joo Lee that their obligations under this Section have expired.

V. Antitrust Compliance Program

A. Within thirty (30) days after entry of this Final Judgment, Jier Shin Korea shall appoint an Antitrust Compliance Officer and identify to the United States his or her name, business address, telephone number, and email address. Within forty-five (45) days of a vacancy in the Antitrust Compliance Officer position, Jier Shin Korea shall appoint a replacement, and shall identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Jier Shin Korea's initial or replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States, in its sole discretion.

B. The Antitrust Compliance Officer shall institute an antitrust compliance program for Jier Shin Korea's employees and directors. The antitrust compliance program shall provide at least two hours of training annually on the antitrust laws of the United States, such training to be delivered by an attorney with relevant experience in the field of United States antitrust law.

C. Each Antitrust Compliance Officer shall obtain, within six months after entry of this Final Judgment, and on an annual basis thereafter, on or before each anniversary of the entry of this Final Judgment, from each person subject to Paragraph V.B of this Final Judgment, and thereafter maintaining, a certification that each such person has received the required two hours of annual antitrust training.

D. Each Antitrust Compliance Officer shall communicate annually to all Jier Shin Korea employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of the United States antitrust laws.

E. Each Antitrust Compliance Officer shall provide to the United States within six months after entry of this Final Judgment, and on an annual basis thereafter, on or before each anniversary of the entry of this Final Judgment, a written statement as to the fact and manner of Jier Shin Korea's compliance with Section V of this Final Judgment.

VI. Retention of Jurisdiction

This Court retains jurisdiction to enable any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

VII. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Jier Shin Korea and Sang Joo Lee agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Jier Shin Korea and Sang Joo Lee waive any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Jier Shin Korea and Sang Joo Lee agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Jier Shin Korea or Sang Joo Lee has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against Jier Shin Korea or Sang Joo Lee, whether litigated or resolved prior to litigation, Jier Shin Korea and Sang Joo Lee agree to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

VIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire seven (7) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court, Jier Shin Korea, and Sang Joo Lee that the continuation of the Final Judgment no longer is necessary or in the public interest.

IX. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

DATED: _____

United States District Judge

Attachment 1

Settlement Agreement

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the Civil Division of the United States Department of Justice and the United States Attorney's Office for the Southern District of Ohio, on behalf of the Defense Logistics Agency (DLA) and the Army and Air Force Exchange Service (AAFES) (collectively the "United States"), Jier Shin Korea (Jier Shin) and Sang Joo Lee, and Relator [REDACTED] (hereafter collectively referred to as "the Parties"), through their authorized representatives.

Recitals

A. Jier Shin is a South Korea-based logistics company. Sang Joo Lee is the President of Jier Shin and a shareholder.

B. On February 28, 2018, Relator, a resident and citizen of South Korea, filed a *qui tam* action in the United States District Court for the Southern District of Ohio captioned *United States ex rel. [REDACTED] v. GS Caltex, et al.*, Civil Action No. [REDACTED], pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. 3730(b) (the Civil FCA Action). Relator contends that Jier Shin conspired with other South Korean entities to rig bids on Department of Defense contracts to supply fuel to U.S. military bases throughout South Korea beginning in 2005 and continuing until 2016, including DLA Post, Camps, and Stations contracts executed in 2006, 2009, 2011, and 2013, and AAFES contracts executed in 2008.

C. Jier Shin and Sang Joo Lee will execute a Stipulation with the Antitrust Division of the United States Department of Justice in which Jier Shin and Sang Joo Lee will consent to the entry of a Final Judgment to be filed in *United States v. Jier Shin Korea*, Civil Action No. [to be assigned] (S.D. Ohio) (the Civil Antitrust Action) that will settle any and all civil antitrust claims of the United States against Jier Shin and Sang Joo Lee arising from any act or offense committed before the date of the Stipulation that was undertaken in furtherance of an attempted or completed antitrust conspiracy involving PC&S and/or AAFES fuel supply contracts with the U.S. military in South Korea during the period 2005 through 2016.

D. The United States contends that it has certain civil claims against Jier Shin and Sang Joo Lee arising from a

conspiracy among South Korean entities to rig bids on Department of Defense contracts to supply fuel to U.S. military bases throughout South Korea beginning in 2005 and continuing to 2016, including DLA Post, Camps, and Stations contracts executed in 2006, 2009, 2011, and 2013, and AAFES contracts executed in 2008. The conduct described in in this Paragraph, as well as the conduct, actions, and claims alleged by Relator in the Civil FCA Action is referred to below as the Covered Conduct.

E. This Settlement Agreement is neither an admission of liability by Jier Shin and Sang Joo Lee nor a concession by the United States or Relator that their claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees, and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

Terms and Conditions

1. Jier Shin and Sang Joo Lee jointly and severally agree to pay to the United States five hundred thousand dollars (\$500,000) by electronic funds transfer no later than ten (10) business days after the Effective Date of this Agreement pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice (Initial Payment). Jier Shin and Sang Joo Lee jointly and severally agree to pay to the United States five-hundred thousand dollars (\$500,000) by electronic funds transfer no later than sixty (60) days after the Effective Date of this Agreement (Second Payment). Jier Shin and Sang Joo Lee jointly and severally agree to pay to the United States five-hundred thousand dollars (\$500,000) by electronic funds transfer no later than one (1) year after the Effective Date of this Agreement (Third Payment). Jier Shin and Sang Joo Lee jointly and severally agree to pay to the United States five-hundred thousand dollars (\$500,000) by electronic funds transfer no later than two (2) years after the Effective Date of this Agreement (Final Payment). The sum of the Initial Payment, Second Payment, Third Payment, and Final Payment shall constitute the FCA Settlement Amount. Relator claims entitlement under 31 U.S.C. 3730(d) to Relator's reasonable expenses, attorneys' fees and costs. The FCA Settlement Amount does not

include the Relator's fees and costs, and Jier Shin and Sang Joo Lee acknowledge (without waiving any applicable arguments or defenses) that Relator retains all rights to seek to recover such expenses, attorneys' fees, and costs from Jier Shin pursuant to 31 U.S.C. 3730(d).

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Jier Shin and Sang Joo Lee's full payment of the FCA Settlement Amount, the United States releases Sang Joo Lee and Jier Shin together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. 3729–3733; the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812; Contract Disputes Act, 41 U.S.C. 7101–7109; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Except as set forth in Paragraph 1 (concerning Relator's claims under 31 U.S.C. 3730(d)), and subject to the exceptions in Paragraph 4 below, and conditioned upon Sang Joo Lee and Jier Shin's full payment of the FCA Settlement Amount, Relator, on behalf of: (a) His respective heirs, successors, assigns, agents and attorneys; and (b) his companies, [REDACTED], together with their direct and indirect subsidiaries, brother or sister corporations, divisions, current or former corporate owners, and the corporate successors and assigns of any of them; hereby fully and finally releases, waives, and forever discharges Sang Joo Lee and Jier Shin, together with its direct and indirect subsidiaries, brother or sister corporations, divisions, current or former corporate owners, and the corporate successors and assigns of any of them, from: (i) Any civil monetary claim Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. 3729–3733; (ii) any claims or allegations Relator has asserted or could have asserted against Sang Joo Lee and Jier Shin arising from the Covered Conduct; and (iii) all liability, claims, demands, actions or causes of action whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal, Korean, or state statute or regulation or otherwise, or in common law, including claims for attorneys' fees, costs, and expenses of every kind and however denominated, that Relator would have standing to bring or which

Relator may now have or claim to have against Sang Joo Lee and Jier Shin and/or its direct and indirect subsidiaries, brother or sister corporations, divisions, current or former corporate owners, and the corporate successors and assigns of any of them.

4. Notwithstanding the releases given in paragraphs 2 and 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Except as explicitly stated in this Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon obligations created by this Agreement;

f. Any liability of individuals other than Sang Joo Lee;

g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

h. Any liability for failure to deliver goods or services due; and

i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. 3730(c)(2)(B). In connection with this Agreement and this Civil FCA Action, Relator, on behalf of himself and his heirs, successors, attorneys, agents, and assigns, agrees that neither this Agreement, nor any intervention by the United States in the Civil FCA Action in order to dismiss the Civil FCA Action, nor any dismissal of the Civil FCA Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. 3730(d)(3), bar Relator from sharing in the proceeds of this Agreement, except that the United States will not contend that Relator is barred from sharing in the proceeds of this agreement under 31 U.S.C. 3730(e)(4). Moreover, the United States and Relator, on behalf of himself and his heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relator

should receive of any proceeds of the settlement of his claims, and that no agreements concerning Relator share have been reached to date.

6. Jier Shin and Sang Joo Lee waive and shall not assert any defenses Jier Shin and Sang Joo Lee may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. Jier Shin and Sang Joo Lee fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Jier Shin and Sang Joo Lee have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. Sang Joo Lee and Jier Shin, together with its direct and indirect subsidiaries, brother or sister corporations, divisions, current or former corporate owners, and the corporate successors and assigns of any of them, hereby fully and finally releases, waives, and forever discharges the Relator, together with his respective heirs, successors, assigns, agents and attorneys, and his companies ([REDACTED]) from any claims or allegations Jier Shin or Sang Joo Lee has asserted or could have asserted, arising from the Covered Conduct, and from all liability, claims, demands, actions or causes of action whatsoever arising from or in any manner related to the Covered Conduct, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal, Korean, or state statute or regulation or otherwise, or in common law, including claims for attorneys' fees, costs, and expenses of every kind and however denominated, that it would have standing to bring or which Jier Shin or Sang Joo Lee may now have or claim to have against Relator and his heirs, successors, assigns, agents, and attorneys.

9. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 CFR 31.205–47) incurred by or on behalf of Sang Joo Lee and Jier Shin, and its present or former officers, directors, employees,

shareholders, and agents in connection with:

(1) The matters covered by this Agreement and any related civil antitrust agreement;

(2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;

(3) Sang Joo Lee and Jier Shin's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement and any related civil antitrust agreement;

(5) the payments that Sang Joo Lee and Jier Shin make to the United States pursuant to this Agreement and any payments that Jier Shin may make to Relator, including costs and attorneys' fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Sang Joo Lee and Jier Shin, and Sang Joo Lee and Jier Shin shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Sang Joo Lee and Jier Shin shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Sang Joo Lee and Jier Shin or any of its subsidiaries or affiliates from the United States. Sang Joo Lee and Jier Shin agree that the United States, at a minimum, shall be entitled to recoup from Jier Shin any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Jier Shin's books and records and to disagree with any calculations submitted by Jier Shin or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Jier Shin, or the effect of any such Unallowable Costs on the amount of such payments.

10. Jier Shin and Sang Joo Lee have provided sworn financial disclosure statements (Financial Statements) to the

United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Jier Shin and Sang Joo Lee warrant that the Financial Statements are complete, accurate, and current. If the United States learns of asset(s) in which Jier Shin and Sang Joo Lee had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by Jier Shin and Sang Joo Lee on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$100,000 or more, the United States may at its option: (a) Rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Jier Shin and Sang Joo Lee previously undisclosed. Jier Shin and Sang Joo Lee agree not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorney's fees and expenses. The United States agrees to notify Relator if the United States invokes either of its options pursuant to this paragraph. Nothing in this agreement shall be interpreted as a waiver of Relator's right to request a share of any proceeds collected by the United States pursuant to this paragraph.

11. In the event that the United States, pursuant to Paragraph 10 (concerning disclosure of assets), above, opts to rescind this Agreement, Jier Shin and Sang Joo Lee agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 60 calendar days of written notification to Jier Shin and Sang Joo Lee that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement.

12. Sang Joo Lee and Jier Shin agree to cooperate fully and truthfully with the United States in connection with the Civil FCA Action. Sang Joo Lee and Jier Shin's ongoing, full, and truthful cooperation shall include, but not be limited to:

a. Upon request by the United States with reasonable notice, producing at the offices of counsel for the United States in Washington, DC and not at the expense of the United States, complete

and un-redacted copies of all non-privileged documents related to the Covered Conduct wherever located in Sang Joo Lee and Jier Shin's possession, custody, or control, including but not limited to, reports, memoranda of interviews, and records concerning any investigation of the Covered Conduct that Sang Joo Lee and Jier Shin have undertaken, or that has been performed by another on Sang Joo Lee and Jier Shin's behalf;

b. upon request by the United States with reasonable notice, making Hyun Dae Shin, Sang Joo Lee, and current Jier Shin directors, officers, and employees available for interviews, consistent with the rights and privileges of such individuals, by counsel for the United States and/or their investigative agents, not at the expense of the United States, in the United States or Taiwan, unless another place is mutually agreed upon;

c. upon request by the United States with reasonable notice, (i) using best efforts to assist in locating former Jier Shin directors, officers, and employees identified by attorneys and/or investigative agents of the United States, and (ii) using best efforts to make any such former Jier Shin directors, officers, and employees available for interviews, consistent with the rights and privileges of such individuals, by counsel for the United States and/or their investigative agents, not at the expense of the United States, in the United States or Taiwan, unless another place is mutually agreed upon; and

d. upon request by the United States with reasonable notice, making Hyun Dae Shin, Sang Joo Lee, and current Jier Shin directors, officers, and employees available, and using best efforts to make former Jier Shin directors, officers, employees available, to testify, consistent with the rights and privileges of such individuals, fully, truthfully, and under oath, without falsely implicating any person or withholding any information, (i) at depositions in the United States, Taiwan, or any other mutually agreed upon place, (ii) at trial in the United States, (iii) at any other judicial proceedings wherever located related to the Civil FCA Action, and (iv) by declaration or affidavit executed in compliance with 28 U.S.C. 1746.

13. This Agreement is intended to be for the benefit of the Parties only.

14. Upon receipt of the Initial Payment of the FCA Settlement Amount described in Paragraph 1 above, the United States and Relator shall promptly sign and file a Joint Stipulation of Dismissal, with prejudice, of the claims filed against Jier Shin in the Civil FCA Action, pursuant to Rule 41(a)(1), which dismissal shall be

subject to the terms of this Agreement, including full payment of the FCA Settlement Amount, and conditioned on the Court retaining jurisdiction over Relator's claims to a relator's share and recovery of attorneys' fees and costs pursuant to 31 U.S.C. 3730(d).

15. Except with respect to payment (if any) by Jier Shin of Relator's attorneys' fees, expenses, and costs pursuant to 31 U.S.C. 3730(d), each Party shall bear its own legal and other costs incurred in connection with this matter. The Parties agree that Relator, Jier Shin, and Sang Joo Lee will not seek to recover from the United States any costs or fees related to the preparation and performance of this Agreement.

16. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

17. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Ohio. Jier Shin and Sang Joo Lee agree that the United States District Court for the Southern District of Ohio has jurisdiction over it for purposes of this Agreement. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Agreement constitutes the complete agreement between the Parties on the subject matters addressed herein. This Agreement may not be amended except by written consent of the Parties.

19. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

21. This Agreement is binding on Sang Joo Lee and Jier Shin's successors, transferees, heirs, and assigns.

22. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

23. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public, as permitted by order of the Court. This Agreement shall not be released in un-redacted form until the Court unseals the entire Civil FCA Action.

24. This Agreement is effective on the date of signature of the last signatory to

the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

Dated: _____

By: _____

Andrew A. Steinberg,
Trial Attorney, Commercial Litigation
Branch, Civil Division, U.S. Department of
Justice.

Dated: _____

By: _____

Mark T. D'Alessandro,
Civil Chief,
Assistant United States Attorney, U.S.
Attorney's Office for the Southern District of
Ohio.

JIER SHIN KOREA

Dated: _____

By: _____

Sang Joo Lee,
Authorized Representative of Jier Shin Korea.

Dated: _____

By: _____

Mark Rosman,
Counsel for Jier Shin Korea.

SANG JOO LEE

Dated: _____

By: _____

Sang Joo Lee

Dated: _____

By: _____

Mark Rosman,
Counsel for Sang Joo Lee.

RELATOR [REDACTED]

Dated: _____

By: _____

[REDACTED]

Dated: _____

By: _____

Eric R. Havian,
Constantine Cannon LLP, Counsel for
Relator.

United States District Court for the Southern District of Ohio Eastern Division

*United States of America, Plaintiff, v. Jier
Shin Korea Co., Ltd., and Sang Joo Lee,*
Defendants.

Case No. 2:20-cv-1788

Competitive Impact Statement

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h) (the "APPA" or "Tunney Act"), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On April 8, 2020, the United States filed a civil antitrust complaint against

Defendants Jier Shin Korea Co., Ltd. (“Jier Shin Korea”) and Sang Joo Lee alleging that Defendants violated Section 1 of the Sherman Act, 15 U.S.C. 1. From at least March 2005 and continuing until at least October 2016 (“the Relevant Period”), Defendants and their co-conspirators conspired to fix prices and rig bids for the supply of fuel to the U.S. military for its operations in South Korea. As a result of this illegal conduct, Defendants and their co-conspirators overcharged American taxpayers by well over \$100 million.

At the same time the Complaint was filed, the United States also filed an agreed-upon proposed Final Judgment that would remedy Defendants’ violation by having Jier Shin Korea and Sang Joo Lee jointly and severally pay \$2,000,000 to the United States. This payment resolves the civil claims of the United States against Defendants related to the conduct described in the Complaint. The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. Defendants

Jier Shin Korea is a small, privately held logistics company located in Seoul, South Korea. Sang Joo Lee is the president of Jier Shin Korea. Jier Shin Korea is a closely held firm majority owned by Lee and his family. Jier Shin Korea provides logistics services related to the transportation of fuel, petroleum by-products, and other goods. During the conspiracy, Jier Shin Korea partnered with a South Korean oil refiner, Hyundai Oilbank Co., Ltd. (“Hyundai Oilbank”), to supply fuel to U.S. military installations in South Korea, with Jier Shin Korea acting as the prime contractor under the relevant contracts.

Other persons, not named as defendants in this action, participated as co-conspirators in the violation alleged in the Complaint and performed acts and made statements in furtherance thereof. These co-conspirators included, among others, GS Caltex Corporation (“GS Caltex”), Hanjin Transportation Co., Ltd. (“Hanjin”), SK Energy Co., Ltd. (“SK Energy”), Hyundai Oilbank, and S-Oil Corporation (“S-Oil”).

On December 12, 2018, GS Caltex, Hanjin, and SK Energy pleaded guilty to an information charging a criminal violation of Section 1 of the Sherman Act for this unlawful conduct. See *United States v. GS Caltex Corporation*, No. 2:18-cr-240 (S.D. Ohio, filed November 14, 2018); *United States v. Hanjin Transportation Co., Ltd.*, No. 2:18-cr-241 (S.D. Ohio, filed November 14, 2018); *United States v. SK Energy Company*, No. 2:18-cr-239 (S.D. Ohio, filed November 14, 2018). GS Caltex, Hanjin, and SK Energy have also settled civil claims brought by the United States in a separately filed civil action relating to the same conduct. See *United States v. GS Caltex Corp. et al.*, No. 2:18-cv-1456 (S.D. Ohio, filed November 14, 2018).

On March 20, 2019, Hyundai Oilbank and S-Oil pleaded guilty to Count One of a Superseding Indictment charging a criminal violation of Section 1 of the Sherman Act for this unlawful conduct. See *United States v. Kim et al.*, No. 2:18-cr-152 (S.D. Ohio, filed September 27, 2018). Hyundai Oilbank and S-Oil have also settled civil claims brought by the United States in a separately filed civil action relating to the same conduct. See *United States v. Hyundai Oilbank and S-Oil Corp.*, No. 2:19-cv-01037 (S.D. Ohio, filed March 20, 2019).

B. PC&S and AAFES Contracts

The United States military procures fuel for its installations in South Korea through competitive solicitation processes. Oil companies, either independently or with a transportation company, submitted bids in response to these solicitations.

The conduct at issue in this action relates to two types of contracts to supply fuel to the U.S. military in South Korea: Post, Camps, and Stations (“PC&S”) contracts and Army and Air Force Exchange Services (“AAFES”) contracts.

PC&S contracts are issued and administered by the Defense Logistics Agency (“DLA”), a combat support agency of the U.S. Department of Defense. The fuel procured under PC&S contracts is used to power military vehicles and heat U.S. military buildings. During the Relevant Period, DLA issued PC&S solicitations listing the fuel requirements for installations across South Korea, with each delivery location identified by a separate line item. Bidders submitted initial bids, offering a price for each line item on which they chose to bid. After DLA reviewed the initial bids, bidders were allowed to submit revised final bids. DLA reviewed the bids and awarded contracts to the bidders offering the

lowest price for each line item.

Payments under the PC&S contracts were wired to the awardees by a finance and accounting agency of the U.S. Department of Defense from its office in Columbus, Ohio.

AAFES is an agency of the Department of Defense headquartered in Dallas, Texas. AAFES operates official retail stores (known as “exchanges”) on U.S. Army and Air Force installations worldwide, which U.S. military personnel and their families use to purchase everyday goods and services, including gasoline for use in their personal vehicles. AAFES procures fuel for these stores via contracts awarded through a competitive solicitation process.

In 2008, AAFES issued a solicitation that listed the fuel requirements for installations in South Korea. Bidders submitted bids offering a price for each line item in the solicitation. Unlike DLA, AAFES awarded the entire 2008 contract to the bidder offering the lowest price across all the listed locations.

C. The Alleged Violation

The Complaint alleges that Defendants and their co-conspirators engaged in a series of meetings, telephone conversations, emails, and other communications to rig bids and fix prices for the supply of fuel to U.S. military installations in South Korea under several PC&S and AAFES contracts.

First, the Complaint alleges that GS Caltex, SK Energy, Hyundai Oilbank, and Jier Shin Korea (including by, through, and with the knowledge of, its president Sang Joo Lee) conspired to rig bids and fix prices on the contracts issued in response to DLA solicitations SP0600-05-R-0063 and SP0600-05-R-0063-0001 (“2006 PC&S contracts”). The term of the 2006 PC&S contracts covered the supply of fuel from February 2006 through July 2009.

The Complaint alleges that between early 2005 and mid-2006, GS Caltex, SK Energy, Hyundai Oilbank, and Jier Shin Korea met multiple times and exchanged phone calls and emails to allocate the line items in the solicitations for the 2006 PC&S contracts. Through such communications, these conspirators agreed to inflate their bids to produce larger profit margins. For each line item allocated to a different co-conspirator, the other conspirators agreed not to bid or to bid high enough to ensure that they would not win that item. DLA awarded the 2006 PC&S line items according to the allocations made by the conspiracy.

Second, the Complaint alleges that, as part of their discussions related to the 2006 PC&S contracts, GS Caltex, Hyundai Oilbank, and Jier Shin Korea agreed not to compete with SK Energy in bidding for the June 2008 AAFES solicitation ("2008 AAFES contract"). The initial term of the 2008 AAFES contract ran from July 2008 to July 2010; the contract was later extended through July 2013.

Third, the Complaint alleges that Jier Shin Korea and other co-conspirators conspired to rig bids and fix prices for the contracts issued in response to DLA solicitation SP0600-08-R-0233 ("2009 PC&S contracts"). Hanjin and S-Oil joined the conspiracy for the purpose of bidding on SP0600-08-R-0233. The term of the 2009 PC&S contracts covered the supply of fuel from October 2009 through August 2013.

The Complaint explains that between late 2008 and mid-2009, Jier Shin Korea and other co-conspirators met multiple times and exchanged phone calls and emails to allocate the line items in the solicitation for the 2009 PC&S contracts. As in 2006, these conspirators agreed to bid high so as to not win line items allocated to other co-conspirators. The original conspirators agreed to allocate to Hanjin and S-Oil certain line items that had previously been allocated to the original conspirators.

Finally, the Complaint alleges that Jier Shin Korea and other co-conspirators once again conspired to rig bids and fix prices for the contracts issued in response to DLA solicitation SP0600-12-R-0332 ("2013 PC&S contracts"). The term of the 2013 PC&S contracts covered the supply of fuel from August 2013 through July 2016.

The Complaint explains that Jier Shin Korea and other co-conspirators communicated via phone calls and emails to allocate and set the price for each line item in the solicitation for the 2013 PC&S contracts. Jier Shin Korea and other co-conspirators believed that they had an agreement as to their bidding strategy and pricing for the 2013 PC&S contracts. As a result of this agreement, they submitted bids with pricing above what they would have offered absent collusion.

Hanjin and S-Oil submitted bids for the 2013 PC&S contracts below the prices set by the other co-conspirators, however. Although lower than the pricing agreed upon by the conspirators, Hanjin and S-Oil still submitted bids above a competitive, non-collusive price, knowing that they would likely win the contracts because the other conspirators would bid even higher prices.

III. Explanation of the Proposed Final Judgment

For violations of Section 1 of the Sherman Act, the United States may seek damages, 15 U.S.C. 15a, and equitable relief, 15 U.S.C. 4, including equitable monetary remedies. See *United States v. KeySpan Corp.*, 763 F. Supp. 2d 633, 638–641 (S.D.N.Y. 2011).

This action is related to three civil actions based on the same facts alleged in the Complaint and filed in the United States District Court for the Southern District of Ohio: (1) *United States v. GS Caltex Corp. et al.*, No. 2:18-cv-1456, which seeks recovery from one set of co-conspirators; (2) *United States v. Hyundai Oilbank Co., Ltd. et al.*, No. 2:19-cv-1037, which seeks recovery from a different set of co-conspirators; and (3) a *qui tam* action currently filed under seal, alleging a violation of the False Claims Act, 31 U.S.C. 3730.

A. Payment and Cooperation

The proposed Final Judgment requires Jier Shin Korea and Sang Joo Lee jointly and severally to pay \$2,000,000 to the United States in three installments: The first installment of \$1,000,000 is due within 10 business days of entry of the Final Judgment; the second installment of \$500,000 is due within one year of the entry of the Final Judgment; and the third installment of \$500,000 is due within two years of the entry of the Final Judgment. These payments will satisfy all civil claims arising from the events described in Section II *supra* that the United States has against Defendants under Section 1 of the Sherman Act and under the False Claims Act. The resolution of the United States' claims under the False Claims Act is set forth in a separate agreement reached between Defendants, the U.S. Attorney's Office for the Southern District of Ohio, and the U.S. Department of Justice's Civil Division. See Attachment 1 of the proposed Final Judgment.

As a result of the unlawful agreements in restraint of trade between Defendants and their co-conspirators, the United States paid more for the supply of fuel to U.S. military installations in South Korea than it would have if the companies had engaged in fair and honest competition. Defendants' payments under the proposed Final Judgment compensate the United States for a portion of the losses it suffered as a result of the conspiracy. In addition to the payment of damages, the proposed Final Judgment also requires Defendants to cooperate with the United States regarding any ongoing civil investigation, litigation, or other proceeding arising out of any ongoing

federal investigation of the subject matter discussed in the Complaint. To assist with these proceedings, Defendants are required to provide all non-privileged information in their possession, make available Jier Shin Korea's present employees (including Lee), and use best efforts to make available Jier Shin Korea's former employees, for interviews or testimony, as requested by the United States.

Under Section 4A of the Clayton Act, the United States is entitled to treble damages for injuries it has suffered as a result of violations of the Sherman Act. The United States agreed to accept the damages amount from Defendants based on several considerations. First, the United States considered how much Defendants individually profited from the conspiracy. Second, the United States considered the risks of pursuing contested litigation and obtaining recovery from Defendants. Third, the United States considered the cooperation and assistance offered by the Defendants to date. Under an ongoing agreement to cooperate entered into at an early stage of the United States' investigation of the bid rigging activity, Defendants have provided and continue to provide information that has benefited the United States' civil investigations. This information and cooperation assisted the United States in obtaining settlements from Defendants' co-conspirators totaling over \$205 million—substantially more than the total damages suffered by the United States as a result of the conspiracy. Finally, the amount reflects the Defendants' demonstration, through the submission of extensive financial information, that they are unable to pay the full amount of damages to which the United States is entitled. The proposed Final Judgment specifies that if the United States discovers any material misrepresentation in these financial statements, the United States may recover the full amount by which the Defendants understated their ability to pay, plus the United States' attorneys fees and costs associated with obtaining such additional recovery.

The proposed Final Judgment also requires Jier Shin Korea to appoint an Antitrust Compliance Officer and to institute an antitrust compliance program. Under the antitrust compliance program, employees and directors of Jier Shin Korea must undergo training and all employees must be informed that there will no reprisal for disclosing to the Antitrust Compliance Officer any potential violations of the United States antitrust laws. The Antitrust Compliance Officer is required annually to certify to the

United States that Jier Shin Korea is in compliance with this requirement.

B. Enforcement of Final Judgment

The proposed Final Judgment contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph VII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph VII(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore competition the United States alleged was harmed by Defendants' challenged conduct. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph VII(C) of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the proposed Final Judgment, Paragraph VII(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Finally, Section VIII of the proposed Final Judgment provides that the Final

Judgment will expire seven years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Litigants

Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damages action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, and the United States remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted by mail to: Robert A. Lepore, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 450 5th Street NW, Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States is satisfied, however, that the relief in the proposed Final Judgment remedies the violation of the Sherman Act alleged in the Complaint. The proposed Final Judgment represents substantial monetary relief while avoiding the time, expense, and uncertainty of a full trial on the merits. Further, Defendants' cooperation with the civil investigation and any potential litigation will enhance the ability of the United States to resolve issues related to the civil investigation and any potential litigation.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. 15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the

defendant within the reaches of the public interest.” *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the “court’s inquiry is limited” in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court’s review of a consent judgment is limited and only inquires “into whether the government’s determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable”).

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government’s complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may “not to make de novo determination of facts and issues.” *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, “[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.” *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). “The court should bear in mind the flexibility of the public interest inquiry: The court’s function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest.” *Microsoft*, 56 F.3d at 1460 (quotation marks omitted). More demanding requirements would “have enormous practical consequences for the government’s ability to negotiate future settlements,” contrary to congressional intent. *Id.* at 1456. “The Tunney Act was not intended to create a disincentive to the use of the consent decree.” *Id.*

The United States’ predictions about the efficacy of the remedy are to be

afforded deference by the Court. *See, e.g., Microsoft*, 56 F.3d at 1461 (recognizing courts should give “due respect to the Justice Department’s . . . view of the nature of its case”); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (“In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[.]; it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.”) (internal citations omitted); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting “the deferential review to which the government’s proposed remedy is accorded”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (“A district court must accord due respect to the government’s prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case”). The ultimate question is whether “the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest.’” *Microsoft*, 56 F.3d at 1461 (quoting *W. Elec. Co.*, 900 F.2d at 309).

Moreover, the Court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government’s decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (“the ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged”). Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using

consent judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). “A court can make its public interest determination based on the competitive impact statement and response to public comments alone.” *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: April 8, 2020.

Respectfully submitted,

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