

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

HYUNDAI OILBANK CO., LTD.
182, Pyeongsin 2-ro
Daesan-eup, Seosan-si, Chungcheongnam-do
South Korea

and

S-OIL CORPORATION
192, Baekbeom-ro, Mapo-gu
Seoul, South Korea,

Defendants.

CASE NO. 2:19-cv-1037

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 Hyundai Oilbank Co., Ltd. and S-Oil Corporation 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 other large South Korean oil refiners and 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 vastly higher profit margins on the fuel they supplied to the U.S. military than on the fuel they sold to the South Korean military and to private parties.

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. Defendants have agreed to plead guilty to one count of a superseding indictment charging a criminal violation of Section 1 of the Sherman Act for this unlawful conduct, and in this civil action, the United States seeks compensation for the injuries it incurred as a result of this conspiracy.

II. DEFENDANTS

4. Hyundai Oilbank Co., Ltd. (“Hyundai Oilbank”) is an oil company headquartered in Seosan, South Korea. Hyundai Oilbank refines and supplies gasoline, diesel, kerosene, and other petroleum products for sale internationally. During the conspiracy, Hyundai Oilbank partnered with a logistics firm (“Company A”) to supply fuel to U.S. military installations in South Korea, with Company A acting as the prime contractor under the relevant contracts.

5. S-Oil Corporation (“S-Oil”) is an oil company headquartered in Seoul, South Korea. S-Oil refines and supplies gasoline, diesel, kerosene, and other petroleum products for sale internationally. Beginning in 2009, S-Oil partnered with Hanjin Transportation Co., Ltd. (“Hanjin”) to supply fuel to U.S. military installations in South Korea, with Hanjin acting as the prime contractor under the relevant contracts.

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, SK Energy Co., Ltd. (“SK Energy”), and Company A.

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.

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, e-mails, 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 Company A 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 other conspirators met multiple times and exchanged phone calls and e-mails 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, GS Caltex, Hyundai Oilbank, and other conspirators agreed not to compete with SK Energy in bidding for the 2008 AAFES contract. In 2008, GS Caltex, Hyundai Oilbank, and other conspirators honored their agreement: GS Caltex bid significantly above the bid submitted by SK Energy for the AAFES contract, while Hyundai Oilbank and Company A 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, Defendants 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, Defendants and other co-conspirators met multiple times and exchanged phone calls and e-mails 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 the Defendants and other co-conspirators. Hyundai Oilbank and Company A accidentally won one line item that the conspiracy had allocated to GS Caltex. To remedy this misallocation, Company A, Hyundai Oilbank, and GS Caltex agreed that GS Caltex, rather than Hyundai Oilbank, would supply Company A with the fuel procured under this line item.

2013 PC&S Contracts

24. Similar to 2006 and 2009, Defendants 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. Defendants and other co-conspirators communicated via phone calls and e-mails to allocate and set the price for each line item in the solicitation for the 2013 PC&S contracts. Defendants 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. GS Caltex 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 the Defendants and their co-conspirators engaged in fair competition.

VII. REQUEST FOR RELIEF

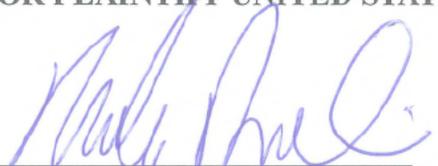
32. The United States requests that this Court:

- (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.

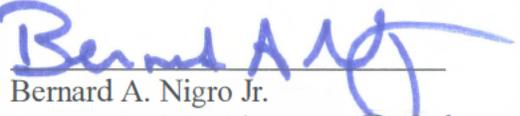
Dated: March 20, 2019

Respectfully submitted,

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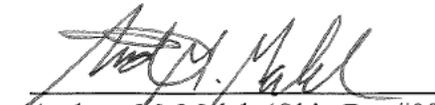
Dated: March 20, 2019

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

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By:

A handwritten signature in black ink, appearing to read "Andrew M. Malek", written over a horizontal line.

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