

24 October 2024

To: T.S. Lines Limited

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The Hong Kong underwriters listed in Schedule 2 to the Hong Kong Underwriting Agreement and the international underwriters listed in Schedule I to the International Underwriting Agreement

From: Kim & Chang

Re: Memorandum on the penalty imposed by Korea Fair Trade Commission

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## MEMORANDUM

### **1. Background of the incident leading to the penalty imposed by Korea Fair Trade Commission (the "KFTC"), including:**

**(a) the entities subject to the KFTC penalties (the "Relevant Entities");**

**Kim & Chang (“K&C”):** Entities subject to penalties are as follows: T.S. Lines Ltd. (Hong Kong entity with its address at 9/F, C-Bons International Center, 108 Wai Yip Street, Kowloon, Hong Kong, “TSL”, note that the Taiwan entity of the TSL Group is not mentioned in the decision), 22 other shipping companies, Committee of Shipowners for Asian Liner Service (a committee of Korean domestic shipping companies, “CSALS”).

**(b) description of the incident;**

**K&C:** From October 2003 through December 2018, 23 shipping companies (including TSL) allegedly held 563 meetings regarding Korea-Southeast Asia routes through CSALS/ Intra-Asia Discussion Agreement Local Action Committee (“IADA LAC”, a working group of Korean shipping companies and Korea branches of foreign shipping companies) and entered into and implemented 122 agreements on container freight service rates (including minimum rates, range of rate increase, and adoption of various surcharges etc.). Please note that for TSL, the period of alleged violation was from August 31, 2005 to February 28, 2018.

**(c) a list of other parties/shipping companies involved in the incident;**

**K&C:** List of shipping companies Involved are as follows: (1) KMTC, (2) Namsung Shipping, (3) Dong Young Shipping, (4) Dongjin Shipping, (5) Pan Continental Shipping, (6) SM Line, (7) HMM , (8) Sinokor Merchant Marine, (9) CK Line, (10) Pan Ocean, (11) Heung A Line, (12) Heung-A Shipping, (13) Cheang Lie Navigation Co., Ltd. (“CNC”), (14) New Golden Sea Shipping Pte. Ltd. (“COSCO”), (15) Gold Star Line Ltd. (“GSL”), (16) Orient Overseas Container Line Limited (“OOCL”), (17) Pacific International Lines (Private) Limited (“PIL”), (18) SITC Container Lines Company Limited (“SITC”), (19) T.S. Lines Ltd. (“TSL”), (20) Sealand Maersk Asia Pte. Ltd. (“Maersk”), (21) Evergreen Marine Corporation (Taiwan) Ltd. (“Evergreen”), (22) Wan Hai Lines Ltd. (“Wan Hai”), (23) Yang Ming Marine

Transport Corporation (“Yang Ming”). CSALS was also involved in the incident as an “enterprisers’ association”.

**(d) description of the respective power, function, and jurisdiction of the KFTC and Ministry of Oceans and Fisheries ("MOF");**

**K&C:** Korea Fair Trade Commission (“KFTC”) is the government institution in charge of the competition policy and enforcement in Korea. KFTC has the Monopoly Regulation and Fair Trade Act (hereinafter “Fair Trade Act”) under its jurisdiction, and has the power to impose penalty surcharges and corrective measures, and also has exclusive right to file criminal charges arising from violations of Fair Trade Act.

Ministry of Oceans and Fisheries ("MOF") is the government department charged with maritime shipping, fishing and marine related issues. MOF has Marine Transportation Act under its jurisdiction. Marine Transportation Act specifies “maintaining the order of marine transportation, ensuring fair competition therein” as one of its purpose (Marine Transportation Act Article 1), and MOF is charged with (i) receiving reports from shipping companies on cargo rate agreements and (ii) imposing corrective measures/sanctions on the shipping companies in case reported agreement substantially limits competition (Marine Transportation Act Article 29).

**(e) basis of the KFTC's decision regarding the incident (including the description/content of the relevant laws/regulations, e.g. Fair Trade Act);**

**K&C:** KFTC based its decision on Article 19(1)<sup>1\*</sup> of Fair Trade Act. \*Please note that the Fair Trade Act has been wholly amended, and the new version of Fair Trade Act has been enforced from 30 December 2021. As the incident took place prior to amendment/enforcement, the provisions of the old Fair Trade Act has been applied to this incident, and that we (K&C) have cited provisions of the old Act in this document, while some provisions of the new Act has been cited as well.

Fair Trade Act Article 19 (Prohibition on Unfair Collusive Conduct) (old)

(1) No business entity shall agree with any other business entity by contract, agreement, resolution, or any other means, to jointly engage in the following acts that unfairly restrict competition (hereinafter referred to as “unfair collusive conduct”) or allow any other business entity to perform such unfair collusive conduct:

1. Determining, maintaining, or changing prices; [...]

KFTC found that the shipping companies have agreed on minimum rates, etc. through various meetings held by CSALS/IADA LAC and, each of the member shipping companies, including TSL, who attended the CSALS/IADA LAC meetings implemented the agreements by increasing freight rates or introducing new surcharges, thereby violating Article 19(1)1 of the Fair Trade Act (old) in its decision dated 11 April 2022.

**(f) description on how the penalty was determined by the KFTC;**

**K&C:** KFTC applied a flat rate of 2% to the relevant revenue (a sum of export route revenue for the alleged period of violation) to calculate the penalty surcharge. The Fair Trade Act provides that maximum 10% rate may be applied in cases of Fair Trade Act Article 19 (old) violation (Fair Trade Act Article 22 (old)).

**(g) other details in relation to the penalty, among other things, the amount of penalty, deadline for payment of penalty, consequence of delay in payment; and**

**K&C:** The exact maximum penalty amount for TSL is 3,996,000,000 KRW. TSL is required to make payment within the deadline specified in the penalty notice, which is 15 July 2022. In case TSL fails to make payment within the deadline, 7.5% delay



annualised interest shall be imposed in addition to the penalty amount (Enforcement Decree to Fair Trade Act Article 87(1)). TSL duly paid the penalty prior to this deadline, and receipt was confirmed by KFTC.

**(h) any other potential punishments to be imposed upon each of the Relevant Entities within the power of the KFTC.**

**K&C:** KFTC has the power to impose corrective measures in relation to the violation, and has done so – KFTC issued a corrective measure order on 11 April 2022 for prohibition of collusive acts (agreement on cargo rates for Korea-Southeast Asia routes in violation of Marine Transport Act Article 29) - along with the penalty surcharge.

Further, as stated above, KFTC has the exclusive right to file for opening of a criminal investigation for cases of Fair Trade Act violation, but has refrained from filing a criminal case for the incident – meaning that while KFTC examiner's report (which is a KFTC-produced document for review of individual incident, written by the KFTC's case handler (examiner) based on results of KFTC investigation dated May 2021) clearly mentioned referral to criminal investigation as part of examiner's opinion on sanction applicable to the incident, KFTC did not include referral to criminal investigation in its decision.

We also confirm that KFTC has shown no intention to overturn this decision up to the date of writing (24 October 2024), and there are no known cases of KFTC overturning such decisions in absence of express request to file criminal case from other competent authorities.

Also, please note that other Korean governmental bodies / institutions, such as Board of Audit and Inspection of Korea/ Ministry of SMEs and Start-ups / Public Procurement Service (attorney general) may request the KFTC to file for a criminal case.

We have learned that Ministry of SMEs and Start-ups have asked all 23 shipping companies involved in the incident to submit information for the Ministry's review, and duly conducted its review at around June 2022, which could have resulted in the Ministry making a request to KFTC for criminal case referral. We confirm that up to the date of writing (24 October 2024) no such request has been made by the Ministry.

Ministry of SMEs and Start-ups is a government organization whose objective is to strengthen competitiveness and support innovation of Small and Medium-sized Enterprises and Micro Enterprises. The Ministry's policy, jurisdiction and execution is targeted to Micro Enterprises (MEs) and Small and Medium-sized Enterprises (SMEs).

A Micro Enterprise is defined as an enterprise employing nine or less people (in the service industry, four or less people). A Small-sized Enterprise is an enterprise that has annual sales revenue less than 1 to 12 billion Korean Won (threshold varies with industry), and Small-sized Enterprises include Micro Enterprises. A Medium-sized Enterprise is an enterprise that is bigger than Small-sized Enterprise and has annual sales revenue less than 40 to 150 billion Korean Won (threshold varies with industry).

Article 127 (4) of the Fair Trade Act empowers the Ministry of SMEs and Start-ups to request KFTC for filing of a criminal case even in cases where KFTC has decided not to do so. If requested, the KFTC must comply and file criminal case accordingly. There are no fixed timeline for proceedings of a criminal case, and we have seen instances lengthy, years long investigation by authorities in some cases.

However, due to rules on criminal statute of limitation, the prosecution for the case at hand must be completed within the 5 year statutory period and has expired on 27 February 2023. This period is set to commence from the end date of the collusive act, which in this case would be 28 February 2018. Consequently, it should be noted that

due to expiration of statute of limitation, potential of criminal punishment for the incident has been eliminated.

2. **Please describe the current status of the incident (i.e. objection filed on 19 May 2022), basis of the Relevant Entities' objection to the KFTC's decision ("Objection"), and basis of Relevant Entities' potential appeal to court (the "Appeal") (Please describe the primary argument e.g. TS Lines exited Intra Asia Discussion Agreement ("IADA") in 2010, no evidence showed that TS Lines participated in the alleged collusion and any action prior to 2010 should be statutorily time barred, and the secondary argument i.e. the annual reporting process under the Maritime Transportation Act validated the reported collusive practices of the shipping companies in general. . Please also consider the argument that it was the KFTC which defined the market as the Korea-Southeast Asia region/lines, and therefore, the KFTC was wrong in arbitrarily separating Korea-Taiwan region/lines to accentuate the importance of TS Lines). Please provide brief description on the specific timeline of this process.**

**K&C:** We, as the legal counsel for TSL, have filed an objection against the KFTC decision on 18 May 2022. Under the provisions of the Fair Trade Act, KFTC is required to make a decision on the objection within 60 days of receipt of the objection. However, KFTC may decide to extend this period by a maximum of 90 days (Fair Trade Act Article 53(old)/Article 96(new)) The KFTC rejected TSL's objection on 8 July 2022, and the written decision was received at around 13 July 2022. Fair Trade Act also provides that appeal to court must be filed within 30 days from receipt of the written decision on the objection (Fair Trade Act Article 54(old)/99(new)). TSL filed an appeal (court complaint) regarding the KFTC rejection dated 8 July 2022 on 12 August 2022. While the court appeal proceedings are under progress up to the date of



writing (24 October 2024), the court has put the temporarily suspended the proceedings in order to refer to the Supreme Court's (to-be released) decision in a related case (a case filed by another shipping company regarding the incident).

Regarding the basis of objection/appeal, TSL's main arguments were (i) as TSL had expressly withdrawn from IADA in 2010, thereby exiting any/all agreement(s) with other shipping companies, if there existed any agreement(s) in which TSL was a party prior to this withdrawal, the statutory limitation period of 7 years (Fair Trade Act Article 49(4)(old)/Article 80(4)(new)) have already expired, (ii) after TSL's IADA withdrawal, TSL either did not attend the meetings hosted by CSALS/IADA LAC or if attended, its participation was limited to that of a passive observer, and as such, TSL's participation in collusive agreements after 2010 should be denied (refer to Appendix for details on meetings, agreements and TSL participation), and (iii) as TSL's market power (dominance) was very limited and present in Korea-Taiwan routes only, and as such, inclusion of TSL as participant of the overall Korea-Southeast Asia route container freight service rates collusion is contrary to factual evidence. As a matter of Fact, TSL had very limited participation in relation to non-Korea-Taiwan routes related meetings and agreements, and the KFTC was also well aware of such circumstances in making its decision.

- 3. Potential legal consequence and impact of the Objection and the Appeal if they are not successful, e.g. whether the current penalty imposed is the maximum; whether there will be any further potential penalties or enforcement actions taken by KFTC or the court; what is the likelihood of success of the Objection and the Appeal (including the basis of your opinion).**

**K&C:** We see no substantial threat of additional sanctions arising from the Incident, specifically from KFTC and/or the Court. We expect no additional sanctions from KFTC unless there are extraordinary circumstances (i. e. resumption of collusive



actions in Korea-Southeast Asia route container freight service rates and TSL's participation). As for the Court, please note that the Courts in Korea are only endowed with the power to review KFTC's sanctions, and have no authority to issue new sanctions on its own.

Regarding the referral to open criminal case on the incident, KFTC may still be subject to request(s) from Board of Audit and Inspection of Korea/Ministry of SMEs and Start-ups/Public Procurement Service (attorney general) to do so, and in the case this request takes place, KFTC is obliged to file for criminal case. Please note that up to the date of writing, no such request has been made by Board of Audit and Inspection of Korea/Ministry of SMEs and Start-ups/Public Procurement Service (attorney general), and we see that very low likelihood of such request being issued in the future, as criminal statute of limitation for the case has expired on 27 February 2023.

As for the likelihood of success of the Appeal to the court, we see reasonable chance of success, as the Court would objectively review TSL's case, independent from the overall collusive practices of other, especially Korean, shipping companies. In the case of KFTC, we consider that KFTC was not able to issue an objective decision due to KFTC and Korean government's policy concern towards Korean flagged shipping companies. We also confirm other than the court appeal proceeding stated above, TSL had not been/and is unlikely to be subject to any other civil, criminal or administrative action or proceeding, or any investigation in South Korea in relation to the KFTC Incident.

- 4. Please explain the risk in relation to (i) revocation of licenses or any other disciplinary actions, (ii) suspension of business operations (including suspension of any shipping routes), or (iii) any other material adverse impact to the day-to-day**

**operation of the Relevant Entities or any other members of the Group as a result of the incident. Please include basis (e.g. the decision in which KFTC expressly declined to levy criminal punishment on both the entities and the directors/ officers involved, and the written statement (when) from the MOF which expressly stated that the violation identified by KFTC does not constitute an action which would lead to a revocation of license under the Maritime Act) and please highlight any helpful commentary in the case documentation (e.g. if there is any mentioning of "no findings of fraudulent/ dishonest behaviours on the defendants").**

**K&C:** Registration, regulation and control of marine cargo transportation services in Korea is governed by provisions of the Marine Transportation Act Chapter 3 and other relevant provisions in that Act. The Act also specifies the MOF (and/or its minister) as the authority with the jurisdiction over marine cargo transportation services.

In relation to the Incident, the MOF has issued an official interpretation of the Act, specifically on Article 29, and have concluded that (i) the Act has precedence over Fair Trade Act in cases of container freight services fare agreement between the shipping companies, and (ii) shipping companies may comply with this provision by submitting a summary report of fare agreement annually, and any subsequent modifications/amendments made at a later date may be included in the original report, thereby making the entirety of the agreement(s) lawful.

We have obtained a copy of the MOF official interpretation, and confirm that this position was repeated at the KFTC hearing held on 12 January 2022 by the MOF representative who attended the hearing in person.

Otherwise, we are of the opinion that there are no known material adverse impact to the day-to-day operation of the Relevant Entities or any other members of the Group as a result of the incident.

**5. Brief explanation of the actions to be brought by the other 22 companies implicated in the incident and the basis of their objection.**

**K&C:** We have heard that some shipping companies, including most Korean shipping companies have filed objection to the KFTC, and a few shipping companies have opted to file a court case to the Seoul High Court. While we are unable to identify the detailed grounds for such objections/court filings, we assume that the shipping companies would have taken the MOF interpretation and used it as the main ground for their objection/court filing. As was the case for TSL's objection to the KFTC, we were informed that the objections filed by other shipping companies have been rejected as well, and also that these shipping companies have also filed appeal to Seoul High Court. Please note that TSL filed a complaint asking for cancellation of KFTC's dispositions against TSL to Seoul High Court on 12 August 2022. As of 24 October 2024, the Seoul High Court has put the proceedings on hold, to await decision by the Korean Supreme Court regarding a case filed by another shipping company in relation to the KFTC Incident. In case the Court decides in favour of TSL, the original KFTC decision/disposition will be cancelled and KFTC shall be required to make an amended decision in accordance with the Court judgement. In case the Court rules in favour of KFTC, the KFTC decision/disposition shall be maintained.

You may disclose this memorandum (i) where disclosure is required by applicable laws and regulations, (ii) to any regulatory, governmental or judicial authority or securities exchange having jurisdiction over the addressees, or (iii) to your respective auditors, advisers, regulators and affiliates, or any of them, in connection with the Global Offering.

Kim & Chang

KIM & CHANG

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**Appendix – Meetings, Agreements and TSL Participation Rate**

Year		2005	2006	2007	2008	2009	2010	2011
Export Routes	Agreements	1/2(50%)	0/2(0%)	3/4(75%)	3/4(75%)	5/5(100%)	1/4(25%)	1/6(16.7%)
	Meetings	2/36(5.56%)	0/23(0%)	13/25(52%)	8/31(25.81%)	24/37(64.86%)	5/16(31.25%)	1/15(6.7%)
Import Routes	Agreements	0/2(0%)	0/2(0%)	0/3(0%)	0/2(0%)	2/2(100%)	2/2(100%)	4/5(80%)
	Meetings	0/19(0%)	0/9(0%)	0/8(0%)	0/7(0%)	7/9(77.8%)	4/9(45.4%)	1/9(11.1%)

Year		2012	2013	2014	2015	2016	2017	2018
Export Routes	Agreements	3/5(75%)	2/6(33.3%)	2/4(50%)	2/3(66.7%)	0/3(0%)	1/3(33.3%)	0/6(0%)
	Meetings	5/17(29.41%)	2/19(10.53%)	2/14(14.26%)	3/8(37.5%)	1/36(2.78%)	1/21(4.76%)	0/36(0%)
Import Routes	Agreements	3/4(75%)	1/5(20%)	3/3(100%)	3/3(100%)	1/5(20%)	0/9(0%)	0/8(0%)
	Meetings	3/9(33.3%)	3/8(37.5%)	3/3(100%)	3/5(60%)	3/29(10.34%)	0/33(0%)	0/34(0%)