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Defense Contractor Pleads Guilty to Major Fraud in Provision of Supplies to U.S. Troops in Afghanistan

Agrees To Pay \$434 Million in Criminal Penalties and to Settle False Claims Act Allegations

Supreme Foodservice GmbH, a privately held Swiss company, and Supreme Foodservice FZE, a privately-held United Arab Emirates (UAE) company, pleaded guilty today to major fraud against the United States and agreed to resolve civil violations of the False Claims Act, in connection with a contract to provide food and water to the U.S. troops serving in Afghanistan, the Justice Department announced today. The companies pleaded guilty in the Eastern District of Pennsylvania (EDPA) and paid \$288.36 million in the criminal case, a sum that includes the maximum criminal fine allowed.

In addition, Supreme Group B.V. and several of its subsidiaries have agreed to pay an additional \$146 million to resolve a related civil lawsuit, as well as two separate civil matters, alleging false billings to the Department of Defense (DoD) for fuel and transporting cargo to American soldiers in Afghanistan. The lawsuit was filed in the EDPA, and the fuel and transportation allegations were investigated by the Southern District of Illinois and the Eastern District of Virginia, respectively, along with the Department's Civil Division.

"The civil resolutions and agreements reflect the Justice Department's continuing efforts to hold accountable contractors that have engaged in war profiteering," said Acting Assistant Attorney General Joyce R. Branda for the Justice Department's Civil Division. "The department will pursue contractors that knowingly seek taxpayer funds to which they are not entitled."

"These companies chose to commit their fraud in connection with a contract to supply food and water to our nation's fighting men and women serving in Afghanistan," said U.S. Attorney Zane David Memeger for the Eastern District of Pennsylvania. "That kind of conduct is repugnant, and we will use every available resource to punish such illegal war profiteering."

The Criminal Fraud

In 2005, Supreme Foodservice AG, now called Supreme Foodservice GmbH, entered into a contract with the Defense Supply Center of Philadelphia (DSCP, now called Defense Logistics Agency – Troop Support) to provide food and water for the U.S. forces serving in Afghanistan. According to court documents, between July 2005 and April 2009, Supreme Foodservice AG, together with Supreme Foodservice KG, now called Supreme Foodservice FZE, devised and implemented a scheme to overcharge the United States in order to make profits over and above those provided in the \$8.8 billion subsistence prime vendor (SPV) contract. The companies fraudulently inflated the price charged for local market ready goods (LMR) and bottled water sold to the United States under the SPV contract. The Supreme companies did this by using a UAE company it controlled, Jamal Ahli Foods Co. LLC (JAFCO), as a

middleman to mark up prices for fresh fruits and vegetables and other locally-produced products sold to the U.S. government, and to obscure the inflated price the Supreme companies were charging for bottled water. The fraud resulted in a loss to the government of \$48 million.

Supreme AG, Supreme FZE and Supreme's owners (referred to in court documents as Supreme Owners #1 and #2) made concentrated efforts to conceal Supreme's true relationship with JAFCO, and to make JAFCO appear to be an independent company. They also took steps to make JAFCO's mark-up on LMR look legitimate, and persisted in the fraudulent mark-ups even in the face of questions from DSCP about the pricing of LMR.

Even though the SPV contract stated that the Supreme food companies should charge the government the supplier's price for the goods, emails between executives at the companies (referred to as Supreme Executive #1, #2, etc) reveal the companies' deliberate decision to inflate the prices. Among other things, Supreme Owner #1 increased the mark-up that JAFCO would impose on non-alcoholic beer from 25 percent to 125 percent. On or about Feb. 16, 2006, during a discussion about supplying a new product to the U.S. government, one Supreme executive wrote to another, "I am very sure the best option is to buy it from Germany and mark up via [JAFCO], like [non-alcoholic] beer."

In early March 2006, after a DSCP contracting officer told the Supreme food companies that she wanted to see a manufacturer's invoice for specific frozen products, Supreme Foodservice GmbH lowered its prices for those products to prices that did not include a JAFCO mark-up. On March 14, 2006, instead of disclosing that the initial pricing had included a mark-up, a Supreme executive misled the DSCP representative by saying, "Based on more realistic quantities, we have been able to negotiate a better price," to explain the change in pricing.

In June 2006, when a DSCP contracting officer raised questions about pricing focusing on four specific items, Supreme executives again misled the DSCP, claiming that the high prices were for a high quality of product, and offering to sell lower quality products for lower prices. Supreme Foodservice GmbH did this even after analyzing its JAFCO margin on the four items in question and finding its profit margins were between 41 and 56 percent.

In September 2007, after a fired Supreme executive threatened to tell the DSCP about the fraud, his former employer entered into negotiation of a "separation agreement" with that executive to induce that executive not to disclose the ways in which the Supreme food companies were overcharging the DSCP. The agreement stated that the executive would receive, among other things, a payment of 400,000 euros in September 2010, provided that the executive did not cause: a deterioration in the economic situation linked to the SPV contract; the termination of the SPV contract; or a decrease in the price levels for products, specifically including LMR and bottled water provided to the U.S. government.

Defendant Supreme GmbH pleaded guilty to major fraud against the United States, conspiracy to commit major fraud and wire fraud. Supreme FZE, which owns JAFCO, pleaded guilty to major fraud against the United States. The Supreme companies agreed to jointly pay \$48 million in restitution and \$10 million in criminal forfeiture. Each company also agreed to pay \$96 million in criminal fines. In addition, as a result of the criminal investigation, the Supreme companies paid \$38.3 million directly to the DSCP as a refund for separate overpayments on bottled water.

The Civil Settlements

In a related civil settlement, Supreme Group agreed to pay another \$101 million to settle a whistleblower lawsuit, filed in the U.S. District Court for the EDPA by a former executive, which alleged that Supreme Group, and its food subsidiaries, violated the False Claims Act by knowingly overcharging for supplying food and water under the SPV contract. The payment also resolves claims that, from June 2005 to December 2010, the Supreme food companies failed to disclose and pass through to the government rebates and discounts it obtained from its suppliers, as required by its SPV contract with the United States.

“Today’s results are part of an ongoing effort by the Defense Criminal Investigative Service (DCIS) and its law enforcement partners to protect the integrity of the Department of Defense’s acquisition process from personal and corporate greed,” said Deputy Inspector General for Investigations James B. Burch for the U.S. Department of Defense’s Office of the Inspector General. “The Defense Criminal Investigative Service will continue to pursue allegations of fraud and corruption that puts the Warfighter at risk.”

“We are very pleased with this resolution, and are gratified that the public can now see what we’ve been aggressively investigating,” said Director Frank Robey of the U.S. Army Criminal Investigation Command’s Major Procurement Fraud Unit (MPFU). “Companies that do business with the government must comply with all of their obligations, and if they overcharge for supplying our men and women in uniform who are bravely serving this nation, they must be held accountable for their actions.”

Separately, Supreme Site Services GmbH, a Supreme Group subsidiary, agreed to pay \$20 million to settle allegations that they overbilled for fuel purchased by the Defense Logistics Agency (DLA) for Kandahar Air Field (KAF) in Afghanistan under a NATO Basic Ordering Agreement. The government alleged that Supreme Site Services’ drivers were stealing fuel destined for KAF generators while en route for which the company falsely billed DLA.

“It is important that government contractors supporting conflicts abroad be held accountable for their billings to the government,” said U.S. Attorney Dana J. Boente for the Eastern District of Virginia. “The DoD investigating components are instrumental in protecting the interests of the government, and their efforts in this investigation are to be commended.”

Supreme Group’s subsidiary Supreme Logistics FZE also has agreed to pay \$25 million to resolve alleged false billings by Supreme Logistics in connection with shipping contracts between the U.S. Transportation Command (USTRANSCOM), located at Scott Air Force Base in Illinois, and various shipping carriers to transport food to U.S. troops in Afghanistan during Operation Enduring Freedom. The shipping carriers transported cargo destined for U.S. troops from the United States to Latvia or other intermediate ports, and then arranged with logistics vendors, including Supreme Logistics, to carry the cargo the rest of the way to Afghanistan. The United States alleged that Supreme Logistics falsely billed USTRANSCOM for higher-priced refrigerated trucks when it actually used lower-priced non-refrigerated trucks to transport the cargo.

“The U.S. Attorney’s Office for the Southern District of Illinois is committed to protecting the integrity of all of the vital missions carried out at Scott Air Force Base, including the mission of the U.S. Transportation Command,” said U.S. Attorney Stephen R. Wigginton for the Southern District of Illinois. “These vital services carried out by the brave men and women of the armed forces of the United States deserve, and will receive, our full support, and this office will do everything possible to protect their missions.”

“These settlements are victories for American taxpayers,” said Special Inspector General John F. Sopko for Afghanistan Reconstruction. “It sends a clear signal that whether a case involves a mom and pop outfit or a major multinational corporation, we will work tirelessly with our investigative partners to pursue justice any time U.S. dollars supporting the mission in Afghanistan are misused.”

The EDPA lawsuit was initially filed under the *qui tam* or whistleblower provisions of the False Claims Act, by Michael Epp, Supreme GmbH’s former Director, Commercial Division and Supply Chain. The False Claims Act prohibits the submission of false claims for government money or property and allows the United States to recover treble damages and penalties for a violation. Under the Act’s whistleblower provisions, a private party may file suit on behalf of the United States and share in any recovery. The case remained under seal to permit the United States to investigate the allegations and decide whether to intervene and take over the case. Epp will receive \$16.16 million as his share of the government’s settlement of the lawsuit.

The criminal and civil matters in the EDPA were the result of a coordinated effort by the Department of Justice’s Civil Division, the U.S. Attorney’s Office for the Eastern District of Pennsylvania, DCIS, U.S. Army’s Criminal Investigative Command’s MPFU and the FBI.

The investigation of Supreme Site Services’ alleged false billings for fuel was conducted by the Civil Division and the U.S. Attorney’s Office for the Eastern District of Virginia, and the investigation of Supreme Logistics’ alleged false invoices for transportation was handled by the Civil Division and the U.S. Attorney’s Office for the Southern District of Illinois. Both matters were investigated by the Defense Contract Audit Agency Office of Investigative Support, the Army Audit Agency, the International Contract Corruption Task Force, the U.S. Army’s Criminal Investigative Command’s Major Procurement Fraud Unit, the DoD Office of Inspector General’s DCIS, the Special Inspector General for Afghan Reconstruction, the U.S. Air Force Office of Special Investigations and the Naval Criminal Investigative Service.

The claims resolved by the civil settlements are allegations only, except for the conduct for which the Supreme food companies have pleaded guilty.

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Civil Division

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