

Approval of the Commitment Plan submitted by Daikoku Co., Ltd.

April 6, 2023

Japan Fair Trade Commission

The Japan Fair Trade Commission (hereinafter referred to as the "JFTC") has investigated Daikoku Co., Ltd. (hereinafter referred to as the "Daikoku") in accordance with the provisions of the Antimonopoly Act (hereinafter referred to simply as the "Act"), and suspected that Daikoku's conduct described below might violate the Article 19 of the Act (Article 2, Paragraph (9), Item (v) [Abuse of a Superior Bargaining Position] of the Act).

Recognizing that competition would be promptly restored, through the Commitment Procedures, by measures to be swiftly taken by Daikoku to eliminate its conduct, the JFTC issued the Notice of Commitment Procedures to Daikoku on February 24, 2023, pursuant to the Article 48-6 of the Act.

Daikoku submitted the Commitment Plan to the JFTC for approval of measures necessary to eliminate its conduct described below, pursuant to the Article 48-7, paragraph 1 of the Act.

The JFTC today approved the Commitment Plan, pursuant to the Article 48-7, paragraph 3 of the Act recognizing that the plan is sufficient to eliminate the alleged conduct and expected to be reliably implemented. (Note 1)(Note 2)

It is noted that today's approval of the Commitment Plan does not mean that Daikoku's conduct violated the Act.

(Note 1) An approval of the Commitment Plan is an administrative disposition under the Act.  
(Note 2) The JFTC is to render a decision to rescind the approval pursuant to the Article 48-9, paragraph 1 of the Act and resume the investigation procedure conducted before the Notice of Commitment Procedures is issued, for instance, if the JFTC recognizes that the Commitment Plan is not being conducted according to the approved Commitment Plan.

#### 1 Overview of Daikoku's business

Daikoku operates drugstores called "Daikoku Drug" (hereinafter referred to as "stores") throughout Japan, mainly in the Kinki region. The company sells pharmaceuticals, daily sundries, cosmetics, foods, and other products.

## 2 Overview of the alleged conduct

Daikoku committed the following conduct on its suppliers at latest from March 2020 to around April 2022.

### (1) Return of unsold goods

Daikoku returned unsold goods and other items that remain unsold due to the outbreak of the COVID-19. Daikoku returned unsold goods (i) without justifications attributable to the suppliers who delivered the unsold goods, (ii) without clearly stipulating the conditions for returns by agreement with the suppliers, (iii) without obtaining the suppliers' consent in advance or, even with the consent of the suppliers, without incurring the loss that would normally accrue to the suppliers as a result of the return of the unsold goods, and (iv) despite the absence of requests from the suppliers to accept the return of the unsold goods.

### (2) Forced dispatch of employees, etc.

(a) When closing stores, Daikoku forced its suppliers to dispatch their employees to the stores in order to have them perform work related to the return of unsold goods. Daikoku had not concluded agreement with those suppliers on the terms of dispatch in advance of the conduct, and did not bear expenses necessary to the dispatches.

(b) Upon opening or renovating stores, Daikoku forced its suppliers to dispatch their employees to the stores in order to have them display goods including goods other than those sold by the suppliers. Daikoku had not concluded agreement with those suppliers on the terms of dispatch in advance of the conduct, and did not bear expenses necessary to the dispatches.

## 3 Concept under the Act

(1) The conduct described in 2(1) and (2)(a) above was carried out because of the decreased inbound demand due to the outbreak of the COVID-19.

In purchase transaction, even if it is affected by the spread of the COVID-19, it would be problematic as Abuse of a Superior Bargaining Position if an entrepreneur, whose position in the transaction is superior to that of a supplier, returns unsold goods to the supplier when there is no cause attributable to the supplier, or has the supplier send its employees, etc. to perform a service that should be performed by the entrepreneur itself.

(2) In some case, the conduct described in 2(1) above was performed with the consent of the suppliers. In purchase transaction, even if an entrepreneur obtains consent from a supplier in advance of the conduct, it would be problematic as Abuse of a Superior Bargaining Position if the entrepreneur, whose position in the transaction is superior to that of the supplier, does not bear the loss that should normally be incurred by the supplier due to the return of the unsold goods.

#### 4 Overview of the Commitment Plan

- (1) Resolving at a meeting of the Board of Directors
  - (a) Confirming that the conduct described in 2 above have been ceased
  - (b) Daikoku shall cease to engage in the same conduct described in 2 above, and these measures shall be implemented for the next three years
- (2) Notifying the suppliers and the Daikoku's employees that Daikoku takes measures in accordance with (i) above
- (3) Recovering the lost monetary value incurred by the conduct described in 2 to the suppliers
- (4) Refraining from engaging in conduct similar to that described in 2 above, and implementing these measures for the next three years
- (5) Taking necessary measures to perform following items
  - (a) Preparing action guidelines for compliance with the Act related to transactions with suppliers and disseminating these guidelines to all employees of Daikoku
  - (b) Periodic training for Daikoku's executives and employees, and periodic supervision by legal section for compliance with the Act regarding transactions with suppliers
  - (c) Preparation of rules for disciplinary actions against executives and employees of the company involved in violations of the Act
  - (d) Preparation of rules covering the appropriate treatment of persons who report violations of the Act
  - (e) Dissemination of the reporting system for legal violations to suppliers and employees of the company
  - (f) Establishment of a new director in charge of legal affairs and compliance
- (6) Reporting the status of implementation of the measures mentioned in (i), (ii), (iii) and (v) above to the JFTC
- (7) Reporting annually for the next three years on the status of implementation of measures taken in accordance with (iv) and (v) (b) above to the JFTC

With the implementation of the Commitment Plan, the recovery of the lost monetary value of

4 (3) above is currently expected to be about 750 million yen in total for approximately 80 suppliers.

\* This announcement is tentative translation. Please refer to the original text written in Japanese for more details.