

Capital Tie-up of Kirin Group and Kyowa Hakko Group  
( Tentative Translation )

December 19, 2008  
Japan Fair Trade Commission

Since a report on the acquisition of shares of Kyowa Hakko Kogyo Co., Ltd. (hereinafter referred to as Kyowa Hakko) by Kirin Holdings Company, Ltd. (hereinafter referred to as Kirin HD) was filed, the Japan Fair Trade Commission has investigated the capital tie-up between these groups. The JFTC determined that, although it was concerned that this tie-up would substantially restrain competition in the field of trade related to some articles, this business combination would not be in violation of provisions under the Antimonopoly Act if the remedies proposed by the companies concerned will be securely put into practice.

I. Outline of the Case

This is a case where, as a part of capital tie-up between both groups mainly consisting of the merger of Kirin Pharma Co., Ltd. in the business of pharmaceuticals (hereinafter referred to as Kirin Pharma) and Kyowa Hakko in the same business (This merger was dated October 1, 2008, when Kyowa Hakko changed its trade name to Kyowa Hakko Kirin Co., Ltd. (hereinafter referred to as Kyowa Hakko Kirin), Kirin HD has step by step acquired shares of Kyowa Hakko up to an amount in excess of 50%.

Since these groups are engaged in many common businesses in addition to the pharmaceutical business, they are planning to one by one promote consolidation and alliance of their businesses in the future.

II. Interpretation under the Antimonopoly Act

1. Certain field of trade mainly examined

In this case, the companies concerned have many competitive products between them. The JFTC examined in detail the following six articles, which are considered to largely influence the competition (See Exhibits 1 and 2 for outlines).

- (1) Gene-recombination type human granulocyte colony stimulating factor product (hereinafter referred to as G-CSF)
- (2) Alcohol for liquor material
- (3) Sake-type or mirin (sweet sake) -type fermented seasonings (for restaurants and for processing)
- (4) Wine-type fermented seasonings (for restaurants and for processing)
- (5) Mono sodium glutamate (hereinafter referred to as MSG)
- (6) Complex umami seasonings (for restaurants and for processing)

## 2. Evaluation under the Antimonopoly Act

### (1) G-CSF

#### A. Substantial restraint of competition by unilateral conduct

- (a) After this business combination, the company group concerned will be ranked top with a share of approximately 60% in the G-CSF market and there will be only two manufacturers in this market. Also considering potential competition with “KRN125” (sustainable G-CSF), which is being developed by Kirin Pharma, the share of the company group concerned in the market will possibly be additionally higher in the future.
- (b) “Neu-up,” which has been manufactured and sold by Kyowa Hakko was introduced to the G-CSF market two and a half year after “Gran” manufactured and sold by Kirin Pharma and “α” manufactured and sold by a competitive entrepreneur “A,” and increased its share since then. After this business combination, the concern is that the effect to promote competition Neu-up had before would be lost. The actual prices of these products delivered to medical institutions would be affected.
- (c) G-CSF is a medicine developed by application of biotechnology (hereinafter referred to as bio-medicine). Unlike generic medicines of general chemically synthesized medicines, much time and money are needed to develop biosimilar medicines (equivalent to generic medicines). Participating in this market is not easy.
- (d) Antibiotics are used to treat and prevent infectious diseases, which are material side effects of chemical cancer treatment. G-CSF and antibiotics are used complementarily. It is difficult to say that they are used alternatively. This means that sufficient pressure for competition from adjacent markets is not expected.
- (e) Because of the nature of medicines for medical treatment, it is difficult to apply competitive pressure to pharmaceutical companies from patients and doctors as customers.

Considering this situation, the concern is that unilateral conduct by the company group concerned would substantially restrain competition in a certain field of trade.

#### B. Substantial restraint of competition by coordinated conduct

Considering that this business combination reduces the number of manufacturers in the G-CSF market from three to two, that participation of a new company is not expected for a while because of the situations

described in (c) and (d) in A above, and that competitive pressure hardly works from adjacent markets or customers, the brake would not work sufficiently on coordinated conduct between the company group concerned and other competitive entrepreneurs.

Therefore, there is concern that coordinated conduct between the company group concerned and competitive entrepreneurs would substantially restrain competition in the particular field of trade.

## (2) Alcohol for liquor material

### A. Substantial restraint of competition by unilateral conduct

This business combination results in the share of the company group concerned in the market of liquor material alcohol reaches approximately 65%. Because the majority of customers consist of medium and small sake manufacturers and they tend to place priority in long-continued trade with alcohol suppliers, negotiations for reasonable prices would not be eagerly conducted.

However, there are several major competitors with shares of over 10%, and those competitors are found to have a certain reserved supply capacity expected to become larger. In addition, the fermented alcohol for industrial use will be widely used in manufacturing liquors in the future, and import of alcohol products will possibly increase under lower tariffs in the future. Considering the situation, unilateral conduct by the company group concerned would not substantially restrain competition in the particular field of trade.

### B. Substantial restraint of competition by coordinated conduct

This business combination results in concentration of market shares to a few major entrepreneurs. The majority of customers consist of medium to small sake manufacturers without effective negotiation powers for reasonable prices. However, in addition to the factors listed above in paragraph A, a competitor is planning to construct a new plant and an industrial-use fermented alcohol company has a large reserved supply capacity. Moreover, the entrepreneurs in this field of trade do not have a common interest. Therefore, it is considered that there is only minimal motive for coordinated conduct. Thus, it is considered that coordinated conduct between the company group concerned and competitive entrepreneurs would not substantially restrain competition in the particular field of trade.

(3) Sake-type and mirin (sweet sake) -type fermented seasonings and wine-type fermented seasonings

A. Substantial restraint of competition by unilateral conduct

This business combination results in the shares of the company group concerned amounting to approximately 45% (ranked top) in the market of sake-type and mirin-type fermented seasonings and approximately 55% (ranked top) in the market of wine-type fermented seasonings.

However, there is a major competitor with a share of over 10%, and sake-type fermented seasonings would be possibly imported. In addition, it would be relatively easy for sake or vinegar manufacturers (in the case of sake-type or mirin-type fermented seasonings) or wine manufacturers (in the case of wine-type fermented seasonings) to participate in the market taking advantage of their existing manufacturing facilities and know-how. Further, there are sake, sake compound, mirin and mirin-like seasonings (for sake-type and mirin-type fermented seasonings) and low-price wines (for wine-type fermented seasonings) for adjacent markets and these products can serve as a brake on rising of prices for sake-type and mirin-type fermented seasonings and wine-type seasonings. Moreover, users are processed food manufacturers and restaurants with effective negotiation powers for reasonable prices. Considering this situation, unilateral conduct by the group concerned would not substantially restrain competition in the particular field of trade.

B. Substantial restraint of competition by coordinated conduct

This business combination results in the accumulated market shares of the top three companies including the company group concerned amounting to approximately 60% in the markets for sake-type and mirin-type fermented seasonings and approximately 90% for wine-type fermented seasonings. The concentration in the markets becomes higher. However, in addition to the factors described above in paragraph A, entrepreneurs are manufacturing various products and even custom-made products such as fermented seasonings, and the products manufactured by different entrepreneurs are not homogeneous. There are few motives for coordinated conduct. Further, product prices for restaurants and processed food manufacturers are negotiated on a one-to-one business basis and obtaining information about competitor business conditions is not easy. Considering these situations, coordinated conduct between the company group concerned and competitors would not substantially restrain competition in the particular

field of trade.

#### (4) MSG

##### A. Substantial restraint of competition by unilateral conduct

This business combination results in the company group share of approximately 35% (top ranked) in the MSG market. However, considering that several major competitors have shares of over 10%, that direct import of products from overseas manufacturers are increasing and can easily grow depending on product price trends in the Japanese market in the future, and that processed food manufacturers as users have effective negotiation powers, unilateral conduct by the company group concerned would not substantially restrain competition in the particular field of trade.

##### B. Substantial restraint of competition by coordinated conduct

Considering the situation described above in paragraph A, after this business combination, coordinated conduct between the company group concerned and other competitors would not substantially restrain competition in the particular field of trade.

#### (5) Complex umami seasonings

##### A. Substantial restraint of competition by unilateral conduct

This business combination results in the share of the company group concerned of approximately 30% (ranked second) in the market of complex umami seasonings. However, there are major competitors with shares over 10%. In addition, if the prices of complex umami seasonings rise, customers would procure simple MSG and nucleic-acid-based seasonings instead of complex seasonings, and such adjacent markets would have a certain competitive pressure. Further, restaurants as users have effective negotiation powers. Considering this situation, unilateral conduct by the company group concerned would not substantially restrain competition in the particular field of trade.

##### B. Substantial restraint of competition by coordinated conduct

Considering the situation described above in paragraph A, after this business combination, coordinated conduct between the company group concerned and other competitors would not substantially restrain competition in the particular field of trade.

Note: The JFTC has also examined the cases of MSG and complex umami seasonings from the viewpoint of vertical business combination, and judged that such combination would not substantially restrain competition.

### 3. Remedies Proposed by the Company Group Concerned and Evaluation of the Remedies

#### (1) Remedies proposed by the company group concerned

In the course of its investigation, the JFTC pointed out its concerns about competition in the field of G-CSF trade. The company group concerned then proposed the remedies below.

Kyowa Hakko Kirin will assign the rights related to the research and development peculiar to Neu-up, which is manufactured and sold by Kyowa Hakko Kirin, and those related to manufacture and sale of Neu-up (including the status of the person who has obtained approval for manufacture and sale under the Pharmaceutical Affairs Law) to a third party pharmaceutical company as immediately as possible and will grant a license or the like to such company (hereinafter referred to as the Assignment). (Agreement on the Assignment will be executed by the end of September 2009 and the Assignment will be put into practice by the end of March 2010.)

#### (2) Evaluation under the Antimonopoly Act considering the above remedies

The remedies proposed by the company group concerned assures that the status of the person who has obtained approval for manufacture and sale under the Pharmaceutical Affairs Law will succeed. The Assignee only will be able to manufacture and sell Neu-up. The Assignee may select whether to manufacture Neu-up by itself or entrust the manufacture to other companies. In this remedies, if the assignee so desires, the company group concerned may be entrusted with manufacture in accordance with the remedies. Therefore, with the remedies, the assignee will be able to independently manufacture and sell Neu-up as a new competitor. Thus, it is considered that the competitive situation before the business combination can be substantially recovered.

### III. Conclusion

From the situation described above, the JFTC judged that, if the remedies proposed by the company group concerned is securely implemented, this business combination would not substantially restrain competition in the field

of G-CSF trade.

To assure implementation of the remedies proposed by the company group concerned, the JFTC will monitor the performance situation by having the company group concerned submit a report as required and will sufficiently understand and monitor the competition in the G-CSF market.

## Fields Mainly Examined

Field of Trade	Outline
G-CSF	Medicine for medical treatment with an effect to promote development and multiplication of neutrophils, a kind of white blood cell. Used for neutropenia caused by chemical cancer treatment (Cancer treatment with dosing anticancer drugs) and for promoting increase of neutrophils upon hematopoietic stem cell transplantation. The market scale in FY2007 was approximately 37.2 billion yen.
Alcohol for liquor material	<p>This refers to “Alcohol for material” under the Liquor Tax Law. It is defined as distilled substance containing alcohol with alcohol content over 45%. Manufactured by those having licenses to manufacture alcohol for material under the Liquor Tax Law and used as material for alcohol beverages such as sake or continuously distilled shochu (Group A shochu).</p> <p>This is the same substance as the industrial fermented alcohol used for food or chemical application, but the industrial fermented alcohol is regulated under the Alcohol Business Law, while alcohol for liquor material is regulated under the Liquor Tax Law. Each law requires different manufacturing licenses and control procedures.</p> <p>Some alcohol for liquor material is consumed by the liquor material alcohol manufacturer to manufacture liquors. The remaining alcohol is sold to other liquor manufacturers.</p> <p>The market scale in FY2006 was approximately 7.7 billion yen.</p>
Sake-type and mirin-type fermented seasonings (for restaurants and processing)	<p>Fermented seasonings are obtained by fermenting and maturing rice, starch or saccharides. With salt added as “a measure to prevent drinking” under the Liquor Tax Law, they are not treated as liquors although they contain alcohol. Fermented seasonings can be largely classified into “sake-type,” “mirin-type” and “wine-type.”</p> <p>Sake-type fermented seasonings, mirin-type fermented seasonings and wine-type fermented seasonings can be used as substitutes for sake, mirin and wine.</p> <p>The market scale in FY2006 was approximately 10 billion yen.</p>
Wine-type fermented seasonings (for restaurants and processing)	<p>Refer to the above description for the outline of the products.</p> <p>The market scale in FY2006 was approximately 1 billion yen.</p>
MSG	<p>Chemical compound of glutamic acid, which is one of amino acids. White powder seasoning with the umami content of kelp. By adding this seasoning to dishes and food, flavor similar to that of kelp soup stock is easily given to foods.</p> <p>The market scale in FY2006 was approximately 12.5 billion yen.</p>
Complex seasonings (for restaurants and processing)	<p>Complex seasonings obtained by mixing MSG and nucleic-acid-based seasonings (*). By mixing, umami is remarkably enhanced.</p> <p>The market scale in FY 2006 was approximately 5.4 billion yen.</p> <p>(*) Mixture consisting of “Sodium inosinate,” which is umami content of niboshi (small dried sardines), dried bonito or the like and “sodium guanylate,” which is umami content of shiitake mushroom both for the same amount is called “Sodium ribonucleotide.” Such mixtures</p>



	are generally referred to as nucleic-acid-based seasonings.
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Note: The market scales are calculated based on materials submitted from the companies concerned and shown as round figures by the JFTC.

## General Conditions of Markets in Various Fields of Trade

## (1) G-CSF

Rank	Company	Share
1	Kirin Pharma	Approximately 45%
2	Company A	Approximately 40%
3	Kyowa Hakko	Approximately 15%
(Top)	Total of companies concerned	Approximately 60%
	Total	100%

Source: Prepared by JFTC based on the materials submitted by the companies concerned

## (2) Alcohol for liquor material

Rank	Company	Share
1	Kyowa Hakko	Approximately 35%
2	Mercian Corporation	Approximately 35%
3	Company B	Approximately 15%
4	Company C	Approximately 10%
5	Company D	Approximately 5%
	Others	Approximately 5%
(Top)	Total of companies concerned	Approximately 65%
	Total	100%

Source: Prepared by the JFTC based on the materials submitted by the companies concerned

## (3) Sake-type and mirin-type fermented seasonings

Rank	Company	Share
1	Kyowa Hakko Food Specialties	Approximately 25%
2	Mercian Corporation	Approximately 15%
3	Company E	Approximately 15%
4	Company F	Approximately 5%
5	Company G	Approximately 5%
6	Company H	Approximately 5%
7	Company I	Approximately 5%
8	Kirin-Food-Tech	Approximately 5%
	Others	Approximately 25%

(Top)	Total of companies concerned	Approximately 45%
	Total	100%

Source: Prepared by the JFTC based on materials submitted by the companies concerned

(4) Wine-type fermented seasonings

Rank	Company	Share
1	Mercian Corporation	Approximately 45%
2	Company J	Approximately 30%
3	Kyowa Hakko Food Specialties	Approximately 5%
4	Company K	Approximately 5%
5	Company L	Approximately 5%
	Others	Approximately 10%
(Top)	Total of companies concerned	Approximately 55%
	Total	100%

Source: Prepared by the JFTC based on the materials submitted by the companies concerned

(5) MSG

Rank	Company	Share
1	Company M	Approximately 30%
2	Company N	Approximately 25%
3	Kyowa Hakko Food Specialties	Approximately 20%
4	Kirin-Food-Tech	Approximately 20%
5	Company O	Approximately 10%
6	Company P	Approximately 5%
7	Ajinohon	0 to 5%
	Others	0 to 5%
(Top)	Total of companies concerned	Approximately 35%
	Total	100%

Source: Prepared by the JFTC based on the materials submitted by the companies concerned

(6) Complex umami seasonings

Rank	Company	Share
1	Company Q	Approximately 50%
2	Kirin-Food-Tech	Approximately 25%
3	Company R	Approximately 10%
4	Company S	Approximately 10%

5	Kyowa Hakko Food Specialties	Approximately 10%
(Second)	Total of companies concerned	Approximately 30%
	Total	100%

Source: Prepared by the JFTC based on materials submitted by the companies concerned

Note 1: Competitor names are replaced with alphabetical letters (A, B, C and so on) so that they are hidden.

Note 2: The market shares are calculated based on the materials submitted from companies concerned and shown as round figures by the JFTC. They are given with the minimum unit of 5% in principle.

Note 3: Kirin Pharma and Kirin-Food-Tech are subsidiaries of Kirin HD, and 100% of their votes are held by Kirin HD. Mercian Corporation is a subsidiary whose votes for 50.12% are held by Kirin HD.

Note 4: Kyowa Hakko Food Specialties Co., Ltd. is a subsidiary of Kyowa Hakko, which has 100% of the votes of this company. In addition, 46% of the votes of Ajinihon Co., Ltd. are held by Kyowa Hakko Food Specialties. The equity method is applied to this company.

Note 5: Alcohol for liquor material and MSG are sometimes used by affiliates. Their shares in the markets are calculated excluding such consumption by manufacturer affiliates.