



DEPARTMENT OF JUSTICE

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Competition: Economic Justice for All

by
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Secretary

Good morning to all of you, colleagues, partners and friends in the quest for good governance reforms under our dear President.

I thank you for the delightful invitation to your very timely event, “One. Global. Filipino, Driving Partnerships, Sharpening our Competitive Edge”.

But really, it is not the usual fare for a Secretary of Justice to talk to business titans and big executives in the matter of how business react, on the types of markets, or on the cutting edge issues of trade, investment, and competition. You are, after all, the experts and the economic engines of the country. Our only role in the Department is to support your goals, partner with you in your innovations, and be your ally in development.

But why the focus on competition? But first, the basics. What is competition?

In plain and simple terms, competition means rivalry in the marketplace. It is a struggle for advantage between two or more forces, each possessing in substantially similar if not identical degree, certain characteristics essential to the business sought.

If there is no competition, then our market is not free. The absence of competition means there is monopoly, there is cartel, there is combination in restraint of trade. If there is no competition, the impact is on the consumers - higher prices, less (or zero choice), unsafe or harmful practices.

Competition brings out these benefits:

1. Puts pressure on firms to produce and distribute their products and services at the lowest possible cost.
2. Benefits consumers by ensuring that prices are kept down and are reduced in step with any cost reductions.
3. Allows firms the opportunity to introduce new products or processes and enter new market (technologically advance and higher quality).

Business is about competition - the best products at the least price. This is most important when you go down the economic ladder.

The 2009 Family Income Expenditure Survey (FIES) data shows that: 85% of the average family income of P17,167 per month is spent on basic necessities. The biggest portion goes to food, followed by shelter, transportation and communication, and fuel, light and water. The rest goes to other essentials.

It means that the average Filipino spends most of his income in expenses related to utilities or commodities. Regardless of the

minimum wage and even if we continue to increase it, what is important is to reduce the cost of living in the same way that the cost of doing business should be continuously lowered.

How do we do this – how do we foster a culture of competition?

Many of you know the recent issuance of Executive Order No. 45 in June 2011 designating the DOJ as the Competition Authority. It is a historic first for Philippines, Inc. Since the founding of the Republic, we never had a dedicated agency, unit, or office to address your competition concerns. Well, not surprising given that up to today, we have yet to come up with a national competition framework and policy – to define and implement a plan of action to push for our national economic interest. Perhaps this is one project we can jumpstart.

Under the same E.O., an Office of Competition (or OFC) under the Office of the Secretary of Justice has been created.

Please allow me to quickly brief you on the mandate and functions of the Office for Competition:

1. Investigate all cases involving violations of competition laws and prosecute violators to prevent, restrain and punish monopolization, cartels and combinations in restraint of trade.
2. Enforce competition policies and laws to protect consumers from abusive, fraudulent, or harmful corrupt business practices.
3. Supervise competition in markets by ensuring that prohibitions and requirements of competition laws are adhered to, and to this end, call on other government agencies and/or entities for submission of reports and provision of assistance.

As you can see, the mandate is broad and is not limited to the criminal prosecution of offenders. It includes ways and means to solve constraints. But if there are bad eggs out, we will not hesitate to use our investigative and prosecutorial powers. One example is the DOJ-DOE Task Force that is investigating the oil prices. While there are specific competition issues, the OFC as explained will provide the policy direction and support and interventions.

Some people may ask - Why the DOJ and not any other economic agency? The easy answer is that our institutions and commercial legal regime are patterned after the United States. So, it's the US DOJ which primarily handles anti-trust matters over there, including of course prosecution of violations of anti-trust laws. Note the active and dedicated role recently of the U.S. DOJ in high profile merger cases including the AT&T and T-Mobile case. Just to assure you, our advocacy for freer competition started years ago and is not a kneejerk reaction to the announced PLDT buy out of Digitel. Nothing personal against Misters Pangilinan and Gokongwei.

The challenging answer is that in the Philippines, our set-up is one of sectoral regulation. This simply means that for each commodity industry, there is a government regulator that is tasked to ensure that there is a level playing field. Name the sector, there is a regulator.

As you can see, there is an existing regulator for practically all known sectors.

Has this system been working? Your answer is as good as mine. Hence, the envisioned Office for Competition with top political support coming from no less than His Excellency to work

closely with regulators. In his first State of the Nation Address, the President called for the passage of anti-trust law.

The DOJ has been active in crafting a comprehensive competition law. The House version of the bill has been reported out of the Committee on Appropriation. The Senate version is undergoing Technical Work Group consolidation. If you wish, our Competition Office can brief you separately on the finer points of the proposed legislation.

It suffices to tell you at this point that one difference between the House and Senate versions is in the former, an independent commission is proposed to be the Competition Authority, while in the latter version, authored by the Senate President, it's the DOJ which is being considered as such Competition Authority. But whatever version is ultimately adopted, there is no denying DOJ's mandate to prosecute violators of anti-trust laws would stand and would remain unhampered.

Competition includes as an essential component changes in regulations that stifle business, favor entrenched interests or simply, impose bureaucratic inertia on entrepreneurial spirit and energy.

Allow me to cite a few case studies:

1. When rules and regulations forget economic common sense and list requirements that are not needed or cumbersome, this is anti-competitive specially when there are new entrants. Taking a long time to register a business is not pro-competition or pro-business.
2. When imports or exports cannot be made to take advantage of demand and supply dynamics because of lengthy approval process, we need to simplify, rationalize

and make responsive for products and services to be delivered in the most efficient manner.

3. When companies come together to set prices or to allocate markets for higher margins, this is detrimental to competition.
4. When graft and corruption infect and pervade in the business ecosystem, this is real restraint on a market economy.

In short, where private interests or enterprises stifle competition, the Office for Competition will step in. And where government is not pro-business consistent with our national economic interest, the Office for Competition will also step in to help.

These are but some of the areas we can cooperate on. PPP, or Public Private Partnerships, are not only to be found in infrastructure projects. Its true meaning lies in government and private sector collaborating to make things work in this country.

The next question is: do we have anti-trust laws in place? The answer is a clear yes. The legal citations in E.O. No. 45 lays the foundation for anti-trust enforcement. These laws include:

We will continue to advocate for a practical and principled law.

It is understandable that some of you may be thinking, so what if we have all these laws if they remain unimplemented or good only in paper. Is this not the sad and persistent story of our lives?

On October 10, 2011, or three days ago, the Department issued the formal constitution of the Office for Competition headed by an Assistant Secretary-in-Charge, leading a team of lawyers with business, accounting and economic backgrounds to begin the task of enforcement.

This is not just another government unit. This is the focal unit for you to channel your long standing concerns. We will listen to your inputs and we will act on your recommendations. Just make sure your ideas and suggestions are the best in its class – this is the call for competition, right?

Reflective of the renewed trust and confidence, the Office for Competition now have five cases in its docket. These include bid rigging complaints, combinations in restraint of trade, abuse of dominance, among others. In fact, we received our first complaint three days after E.O. No. 45 took effect.

Now, what are the challenges we face? The first is **capacity**. Although we believe that we have the foremost experts in competition policy and law in the DOJ, there is a lack of market data. There are no in-depth industry studies to map and assess the state of competition or the extent of regulatory capture. In other words, while we have the brains, we do not have the tools. Second, **entrenched systems and vested interests** are in place. We need a new narrative for business and government to realize that rent-seeking behavior is ultimately harmful to everyone in the long term. Anti-competitive measures are anti-developmental. Third, there is **no strong consumer lobby or group**. This is strange since we are a country of consumers. We have yet to develop a strong and robust consumer protection regime.

Competition is, at the final analysis, about protecting the consumers. When competition policy is active, consumer welfare

is increased. Each one of us is a consumer. But we cannot do it alone whether a single consumer or the Office for Competition (or Competition Authority). We need your help. We need your dedication, selfless and committed, to get the task done. We need to fight our baser impulse for 'profits only' mentality and greed in whatever form and transform our businesses to what they truly are – stewardships under our trust and care to serve the benefit of all.

We cry for justice and peace. The imperative of economic justice is as necessary as it is to preserve order. If we are not just in our business practices, if we marginalize the little Filipino consumer, if we clamp down on our small and medium enterprises (SMEs), is there justice in our land?

With this thought, please allow me to end this sharing session with you. Indeed, we are one, global, Filipino community. We are driving for partnerships. We are sharpening our competitive edge. We are for justice for all (including economic justice).

Thank you and *Mabuhay!*