



# DEPARTMENT OF JUSTICE

## Office for Competition Updates

October-December 2014 | Issue No. 1

### Advisory Opinion

## Telcos Warned over Misleading Ads

**ON 24 September 2014, the DOJ-OFC issued an Advisory reminding telecommunication companies to be truthful in the promotion of broadband and mobile internet services.**

The Advisory was issued following complaints from subscribers that they are not getting what they are paying for. The DOJ-OFC reminded the Internet Service Providers (ISPs) that they must not use false, deceptive or misleading advertisements in promoting internet offers.

"Truth in advertising is an access issue," said Secretary of Justice Leila M. de Lima. "Economic justice requires that those who possess the

information duly and timely disclose them," she said in a press release.

ISPs must observe the standards prescribed under the Consumer Act of the Philippines (RA 7394) and other relevant issuances. Under the Act, advertisements, flyers, posters and other promotional materials should not claim any false, fraudulent or misleading representations. Marketing materials should inform the public and not operate as traps to

potential customers. Further, advertising materials should enable consumers to make intelligent decisions. *More on p.6...*

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### Report

## **Modus in Garlic Importation Revealed**

IN June 2014, prices of garlic shot up to an all-time high of PhP 287.06/kilo or 74% increase within a one year period and more than 100% increase from average prices.

This prompted President Benigno Aquino III to order the DOJ-OFC to investigate the matter pursuant to its mandate of investigating all cases involving violations of competition laws and prosecuting violators to prevent, restrain and punish monopolies, cartels and combinations in restraint of trade.

The DOJ-OFC released its report on 3 September 2014 stating that there was no shortage of garlic supply, and that there

was more than adequate stocks of garlic in the country.

The DOJ-OFC found, among others, that the lack of clear-cut guidelines and established procedures in determining the allocation of import permits has made the permit system prone to partiality, manipulation and collusion. *More on p.6...*



*photo credit: www.philstar.com*

*This quarterly newsletter is intended to provide recent information about OFC's policies and enforcement activities.*

## OFC Activities

# OFC hosts 4th ASEAN Competition Conference

ON 16-17 July 2014, the DOJ-OFC hosted the 4th ASEAN Competition Conference (ACC) at the Edsa Shangri-La Hotel, Mandaluyong City.

This year's theme is *Building Blocks for Effective Enforcement of Competition Policy and Law (CPL)* which aimed at promoting competition policy for regional development and shaping the direction of CPL implementation within ASEAN. The Conference focused on establishing workable and innovative approaches for detecting and deterring anti-competitive conduct, both from a public and private enforcement perspective. The hosting of the 4th ACC is one of the initiatives of the OFC as previous Chair of the ASEAN Experts Group on Competition (AEGC) for 2013-2014.

In the run-up towards the establishment of the ASEAN Economic Community (AEC) 2015, the importance of advocating ASEAN's efforts on CPL to various stakeholders was also highlighted in the Conference. The envisioned common market of the AEC provides great opportunities for companies to expand and potentially engage in anti-competitive practices. Hence,



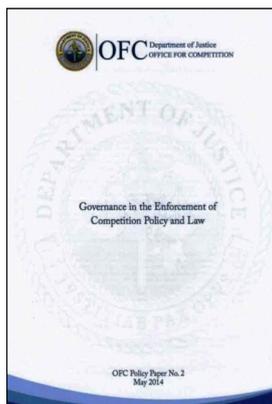
the introduction of CPL, as stipulated in the AEC Blueprint, is an important prerequisite in dealing with imminent enforcement challenges. In deliberating the challenges and options for enhanced cooperation among members of ASEAN, the 4th ACC complements, supplements and substantiates the regional dialogue and preparatory work towards AEC 2015.

The principal topics discussed in the Conference include: sharing of experiences among ASEAN member states (AMS) with respect to CPL enforcement challenges; consideration of new strategies to detect and deter cartels; adoption

of methods to encourage compliance through appropriate sanctions and remedies; and discussion of innovative approaches for CPL enforcement by AMS.

The 4th ACC brought together competition experts, practitioners, and stakeholders from Asia, US, EU, and other parts of the world. The Conference was organized under the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) Economic Cooperation Work Programme (ECWP) and co-sponsored by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

## OFC launches 2nd Policy Paper



THE OFC Policy Paper No. 2 entitled *Governance in the Effective Enforcement of Competition Policy and Law* was formally launched on 25 June 2014 at the Traders Hotel, Manila back to back with a Dialogue with OFC Development

Partners. The event was well-attended by members of the Sector Regulators Council (SRC) and other partners and stakeholders.

OFC Policy Paper No. 2 outlines the requisites of sound policy and decision-making in government, specifically that of a competition agency, discusses how "regulatory capture" affects governance, and highlights the core values of independence, transparency, and accountability.

The first OFC Policy Paper entitled *Cooperation for Competition: The Role and*

*Functions of a Competition Authority and Sector Regulatory Agencies* provides a framework for the interface between the OFC and the sector regulators. It described the current state of competition legislation in the country, presented the economic arguments on why governments regulate industries, and proposed an operational framework between competition and regulatory agencies. The OFC Policy Paper No. 1 was published in July 2013.

**Announcements**



**Call for Essays**

The DOJ-OFC is sponsoring an essay writing contest on the theme:

***Advancing Economic Justice through Competition Policy and Law (CPL)***

Let us know what you think on the following question:

*How does Competition Policy and Law Promote Economic Justice?*

The authors of the Top 5 essays will receive cash prizes while the first prize winner will be invited to OFC-sponsored national and/or international trainings.

**Contest Mechanics:**

1. The contest is open to all Filipino students.
2. Entries should be in English, encoded, double-spaced, with a minimum of 1,500 words and maximum of 3,000 words.
3. Entries may be submitted until **05 December 2014** by email to: [competition@doj.gov.ph](mailto:competition@doj.gov.ph) or personal delivery to:  
Office for Competition  
Department of Justice  
Padre Faura St., Ermita  
Manila 1000

Mailed entries will also be accepted provided that it is delivered to the address given above on COB 5 December 2014.

4. Details showing the name of the writer, his or her contact numbers, email and mailing addresses should be placed on a separate sheet of paper. All the entries shall be considered property of the OFC and may be used by the organization for publication and any other legal purpose.
5. The decision of the judges, selected by the OFC shall be final.
6. The winners will be notified through email, phone call and official letter.

**7. Criteria for judging:**

CRITERIA	DESCRIPTION	WEIGHT IN PERCENT
Content	Relevance, reference to international discourse, Philippine context	70%
Form & Style	Grammar, creative and innovative approach	30%
Total		100%

8. OFC staff and their relatives up to the third degree of consanguinity or affinity are not eligible to join.

**Vacancy Announcements**

THE OFC is offering employment opportunities for motivated individuals to join its team of qualified legal and technical staff. Below are the current opportunities for employment:

- (1) State Counsel III (SG-26)
- (1) State Counsel I (SG-24)
- (1) Legal Assistant (SG-12)
- (1) Economist V (SG-24)
- (1) Economist IV (SG-22)

- (3) Economist III (SG-18)
- (1) Investigation Agent V (SG-24)
- (2) Investigation Agent III (SG-22)

Eligibility requirements and other information can be found at <http://www.doj.gov.ph/office-for-competition.html>

Interested parties are advised to email their application letter and comprehensive resume to:

1. via email: [competition@doj.gov.ph](mailto:competition@doj.gov.ph), or
2. submit to:  
Office for Competition  
Department of Justice  
Padre Faura St., Ermita  
Manila 1000.

## PH moves 13 notches up in Doing Business 2015 Report

THE DOING Business Report (DB) is a study conducted by the World Bank Group since 2003 which aims to measure the costs of business regulations on firms across countries and economies.

One hundred eighty nine (189) economies from around the world are ranked on their ease of doing business. A high ranking on the ease of doing business index means the regulatory environment is more conducive to the starting and operation of a local firm. This index averages the percentile rankings on 10 topics: (1) starting a business; (2) dealing with construction permits; (3) getting electricity; (4) registering property; (5) getting credit; (6) protecting investors; (7) paying taxes; (8) trading across borders; (9) enforcing contracts; and (10) resolving insolvency.

In the 2015 DB Report, the Philippines moved up 13 notches to No. 95 from No. 108. This has positive implications, particularly in the realm of investment.

For its part, the OFC provided answers to surveys on the Enforcing Contracts component of the 2015 DB Report. The purpose of the survey was to record the time, cost and number of procedures involved in resolving a standardized commercial dispute.

This exercise aimed to increased awareness and collaboration between the public and private sectors to ensure better enforcement of contracts and action items to improve the country's world rankings.

The OFC continues to monitor other major indices such as the Global Competitiveness Index (GCI) for which the country continues its upward trend from No. 59 to No. 52 in 2014-2015.

### Garlic...(from p.1)

The report also established that the importation of garlic is mainly controlled by at least four individuals and allied interests through a web or series of dummy entities which are allegedly accredited by concerned authorities.

Based on its findings, the DOJ-OFC recommended the following, among others:

- The National Bureau of Investigation (NBI) should pursue the leads mentioned in the Report and to gather further evidence to prosecute personalities involved and those who may have been in collusion with them;

*...the lack of clear-cut guidelines and established procedures in determining the allocation of import permits has made the permit system prone to partiality, manipulation and collusion.*

- Remove the current permit system, since the supply of garlic is dependent on importations;
- Adopt impartial standards and clear criteria in the grant of import clearances to legitimate and accredited importers; and
- Amend existing laws to strengthen the powers of concerned agencies, as appropriate and applicable.

### OFC Advisory... (from p.1)

Thus, ISPs must provide all the necessary details in their advertisement which include, among others, service rates, minimum connection speed, and service reliability.

The Advisory also called on relevant regulatory agencies to monitor, enforce and implement sanctions on erring telcos under the Consumer Act and the Public Telecommunications Policy Act (RA 7925).

Finally, the Advisory reminded the general public to be critical about advertisements and to practice prudence in their

subscriptions.

Consumers should conduct due diligence before entering into a contract with an ISP. It is their responsibility to report any anomaly, inconsistency or non-conformity with the provisions of laws and regulations to the appropriate government agency.

*"The Advisory serves as a tool for all regulatory agencies in the enforcement of their respective mandates and particularly reminded telecommunications companies to be truthful in their advertisements."*

## National Competition Day Celebration

THE DOJ-OFC will be celebrating the 4th National Competition Day on 5 December 2014 with a week-long celebration starting 1 December. The celebrations will culminate with the hosting of the 1st Annual National Competition Conference with the theme, Advancing Economic Justice through Competition Policy and Law on 9 December.

In solidarity with the global family implementing competition policy and law, the DOJ-OFC

joins its colleagues in the global competition network in the observance of World Competition Day on the 5th of December every year. The celebration has been institutionalized in the country through Proclamation No. 384, series of 2012, declaring every 5th of December as National Competition Day.

More updates on the National Competition Day celebrations will be posted at <http://www.doj.gov.ph/office-for-competition.html> soon!

## OFC Activities

# OFC conducts CPL Training and FGD for Judges

THE OFC, in cooperation with the Supreme Court and in collaboration with the Japan International Cooperation Agency (JICA), held the second series of the seminar entitled *Principles of Competition Policy and Law for Judges* at the Marco Polo Hotel in Cebu City from 21-22 May 2014. There were thirty-eight (38) judges nationwide who participated in the event which aimed to raise awareness on the benefits of competition policy and law (CPL). In January 2014, a similar event was also held for the first batch of judges.

As in the first series, the seminar adopted a discussion-type methodology which enabled maximum interaction between the participants and lecturers. Officials from the Japan Fair Trade Commission (JFTC) and other competition experts delivered presentations on cartels, the link between economic growth and CPL as



well as private litigation system in the area of competition.

As a follow-through training, the third series is tentatively scheduled in the first quarter of 2015. The activity is in line with the proposal submitted by the OFC to the Supreme Court for the creation of competition courts in the Regional Trial Court level and specialized divisions in the Court of Appeals to handle competition cases.

Corollarily on 15 August 2014, the OFC in partnership with JICA,

conducted the Focus Group Discussion (FGD) for judges at the Diamond Hotel, Manila. The FGD served as a feedback mechanism for 10 selected judges who participated in the two CPL seminars to give them an avenue to express their views, comments and recommendations on how to improve the training modules.

The output from the said FGD is two-fold: first, to evaluate the

feasibility of conducting a Training of Trainers (TOT) project among a pool of selected judges who have expressed both interest and commitment on CPL advocacy; and second, to develop a training module, if not a refinement and improvement of the current one, used in CPL trainings for judges. The FGD aligns with the overall OFC-JICA cooperation framework as it provides continuity and sustainability to the previously conducted CPL seminars for judges.

## OFC coordinates Legal Writing Workshop

HYATT REGENCY HOTEL, MANILA — On 26-28 May 2014, the US Fair Trade Commission and US Department of Justice with support from the US Agency for International Development (USAID), sponsored the *Legal Writing Workshop for Competition Law Enforcement Agencies*. The DOJ-OFC coordinated said capacity-building activity attended by its staff as well as participants from other attached agencies and select sector regulators.

The participants were trained on the rudiments of legal writing

related to investigating and prosecuting suspected violations of competition laws. The 3-day Workshop used a blended learning approach which included presentations on principles and techniques combined with practical exercises.

Among the topics discussed are market power in relation to dominance, elements of proof and key facts in agreements in restraint of trade, preparation of investigative plans and checklists, preparation of investigative reports, elements of



procedural fairness, among others.

The Writing Workshop was a follow-up to the US FTC-led training on application of remedies held last 11-13 March 2014 at the Intercontinental Hotel, Makati City.

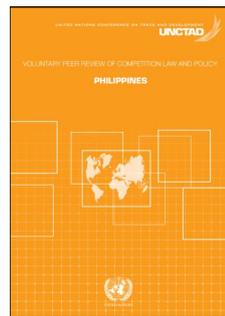
## International Advocacy and Capacity-building

### PH completes UNCTAD Peer Review

THE PHILIPPINES successfully completed its voluntary peer review on Competition Policy and Law conducted by the United Nations Conference on Trade and Development (UNCTAD) in Geneva, Switzerland on 9 July 2014. The peer review process was undertaken as a component of the 14th Session of the Intergovernmental Group of Experts Meeting on Competition Law and Policy of the UNCTAD from 8-10 July 2014.

The peer review may be seen as a process of helping the Philippines strengthen its competition regime which is beneficial in improving its economic and business environment. It is also an opportunity to highlight the country's strengths in the field of competition policy and law enforcement and learn from the

experiences of the other competition authorities. The Philippine delegation was led by DOJ-OFC Assistant Secretary Geronimo Sy together with Ambassador Cecilia Rebong (Permanent Representative and Co-head), SEC Chairperson Teresita Herbosa, PIDS President Gilberto Llanto, among others.



A copy of the UNCTAD Philippine Peer Review Report can be

accessed at: [http://unctad.org/en/PublicationsLibrary/ditclp2014d1\\_en.pdf](http://unctad.org/en/PublicationsLibrary/ditclp2014d1_en.pdf).

### OFC in the Global Competition Review

THE OFC is now included in the 2014 Handbook of Competition Enforcement Agencies, a Global Competition Review (GCR) Special Report.



The Handbook's comprehensive format provides full contact details for competition authorities in over 100 jurisdictions, together with charts showing their structures, functions, and powers.

The inclusion of OFC in the Handbook reinforces OFC's place in the global map of competition authorities and is another welcome development for OFC's engagement in meaningful international advocacy and outreach.

### DOJ-OFC staff undergoes internship training in Korea

THE DOJ- OFC sent three of its staff to Korea for an internship program under the International Cooperation Division of the Korea Fair Trade Commission (KFTC)

from 3-30 September 2014. The said Internship Program, which is implemented annually, is part of KFTC's technical assistance program in competition law enforcement.

This year's program covered four major topics: economic analysis; mergers and acquisitions; cartels; and abuse of dominant position. Visits to satellite offices, attached agencies, and major industrial sites (mainly Samsung and KIA Motors) were also part of the program.

The OFC team was composed of State Counsels Margarette Robles and Jane Hazel Marie Garcia, and Economist Maria Alelie A. German. The team likewise attended the 8th Seoul International Competition Forum as well as the 18th International Workshop on Competition Policy held in Seoul. The OFC team delivered a presentation on CPL updates and experiences in enforcement during said Workshop.



*Certificates of Completion were awarded to the interns on the last day of the internship program by the Director of the International Cooperation Division Mr. Sung Keun Kim (leftmost) assisted by Deputy Director Miyoung Kim (rightmost), the overall coordinator of the program.*

## International Advocacy and Capacity-building



### **AEGC holds Business Compliance Workshop**

SINGAPORE — ON 20 August 2014, the ASEAN Experts Group on Competition (AEGC) conducted the Workshop on Promoting Competition Compliance in ASEAN held at the Grand Park City Hall Hotel, Singapore. The workshop aimed to provide guidance to ASEAN competition authorities in designing effective outreach programmes for the business community and exploring possible strategies and approaches to encourage

competition law compliance among businesses.

OFC Head and DOJ Assistant Secretary Geronimo Sy together with SEC Director Ferdinand Sales attended the event along with representatives of the AEGC and the ASEAN Secretariat. The workshop also discussed issues related to the design and implementation of appropriate outreach and evidence-based advocacy measures vis-à-vis the business community.

The workshop is set against the backdrop of enhancing regional cooperation on CPL and links with ongoing deliberations of the AEGC on a strategic Action Plan beyond 2015. The realization of the ASEAN Economic Community (AEC) increases the need to ensure a level playing field among various market players and necessitates greater legal certainty for businesses to operate within the larger regional market.

### **ASEAN formulates a Post-2015 Vision and Strategic Action Plan on Competition**



JAKARTA, INDONESIA — A Brainstorming Meeting on the ASEAN Post-2015 Competition Action Plan was convened by the AEGC from 9-10 September.

The Meeting was held in compliance with the directives of the ASEAN High-Level Task Force on Economic Integration (HLTF-EI) to develop a strategic

framework towards 2025. Participants to the event deliberated on a post-2015 vision, with new targets and a regional plan of action on competition policy for the period 2016-2025. The outcome of the brainstorming meeting was a draft post-2015 Competition Action Plan which is set to be finalized during the 14th AEGC Meeting to be held this November in Thailand.

OFC Director Heiddi Venecia Barrozo and State Counsel Adonis Sulit attended the Meeting.

### **AEGC organized Legal Drafting Workshop on CPL**

BALI, INDONESIA — On 24-25 September 2014, members of the AEGC met to exchange views and experiences in addressing common challenges in the enactment of CPL. Facilitated by Mr. Hassan Qaqaya and Mr. Pierre Horna from the United Nations Conference on Trade and Development (UNCTAD), the Workshop discussed the substantive elements of a modern competition law – with reference to the UNCTAD Model Law on Competition; the institutional design for CPL enforcement of agency effectiveness; and the various issues and challenges in the application of competition rules.

State Counsel Florina Agtarap represented the OFC in the Workshop.



# About the OFC

THE OFFICE for Competition (OFC) was created by Executive Order No. 45, series of 2011, designating the Department of Justice (DOJ) as the country’s Competition Authority.

It is mandated to enforce competition policies and laws to supervise and promote competition in markets consequently protecting consumers from abusive or harmful business practices. Hence, it is the fundamental responsibility of the Office to investigate and prosecute cases involving violations of competition laws.

The DOJ-OFC also promotes transparency and accountability in markets by conducting and disseminating sector studies, reports and other relevant issuances.

The DOJ-OFC works hand-in-

hand with sector regulators, government agencies, and development partners to encourage international cooperation and strengthen trade relations with other countries. To coordinate competition work with other agencies, the OFC created various “working groups” that are co-chaired by other agencies such as the Tariff Commission for the advocacy and partnerships, the SEC for Business and Economics, the BIR for enforcement and legal, the DTI for consumer welfare and protection, and the PIDS for policy and planning.

To date, the Office is headed by **Assistant Secretary Geronimo Sy** and is composed of 28 full-time and support legal and technical staff from various DOJ agencies.

## Vision

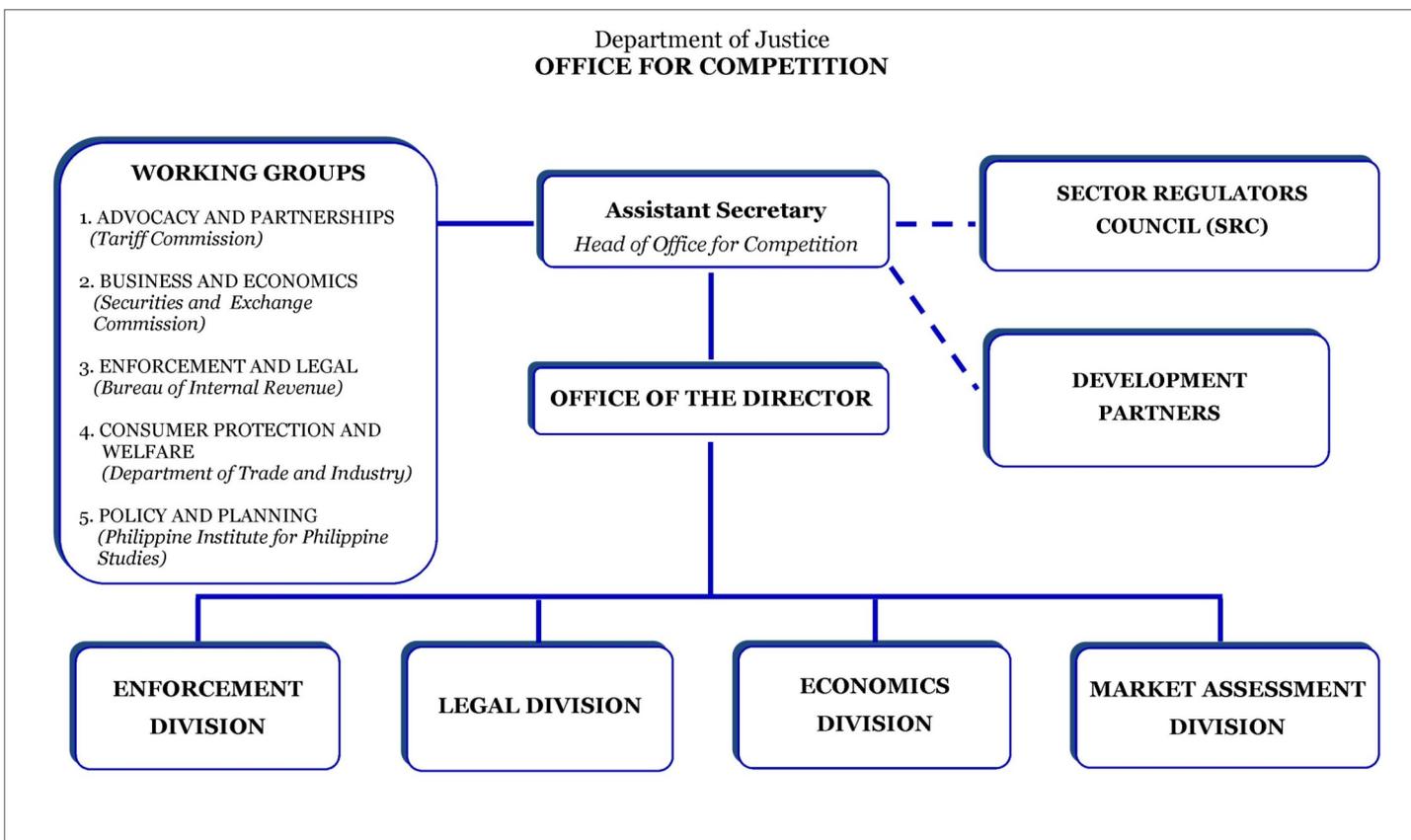
*A just and peaceful society anchored on the principles of transparency, accountability, fairness, and truth.*

## Mission

*Towards the effective, efficient, and equitable administration of justice, more specifically economic justice, that promotes a culture of competition and levels the playing field by providing guidance and enforcing competition policy and law.*

## Principles

*Fairness, accountability, and transparency  
Rules-based, respect for market dynamics  
Consultative and participative*



**OFC** Department of Justice  
OFFICE FOR COMPETITION