



Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

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Department Circular No. 011

**Guidelines Governing the Implementation of Executive Order
No. 45, series of 2011, Designating the Department of Justice
as the Competition Authority**

WHEREAS, Section 19, Article XII of the 1987 Constitution mandates that the State shall regulate or prohibit monopolies when the public interest so requires and that no combinations in restraint of trade or unfair competition shall be allowed as a policy on national economy;

WHEREAS, Republic Act No. 4152¹ approved on 20 June 1964 vests upon the Secretary of Justice the duty "to study all laws relating to trusts, monopolies and combinations; to draft such legislation as may be necessary to update or revise existing laws to enable the Government to deal more effectively with monopolistic practices and all forms of trusts and combination in restraint of trade or free competition and/or tending to bring about non-competitive prices of articles of prime necessity; to investigate all cases involving violations of such laws; and to initiate and take such preventive or remedial measures, including appropriate judicial proceedings to prevent or restrain monopolization and allied practices or activities of trust, monopolies and combinations;"

WHEREAS, Executive Order No. 45 designated the Department of Justice (DOJ) as the first Competition Authority for the country and created an Office for Competition (OFC) to exercise its functions;

WHEREAS, the functions of OFC under the Executive Order include the following:

- a) Investigate all cases involving violations of competition laws and prosecute violators to prevent, restrain and punish monopolization, cartels and combinations in restraint of trade;

¹ An Act Amending Sections One and Two of Republic Act Numbered Two Thousand Seven Hundred Five, as Amended, Entitled "An Act Prescribing the Duties and Qualifications, and Fixing the Number and Salaries, of the Members of Legal Staff in the Office of the Secretary of Justice" approved on 20 January 1964.

- b) Enforce competition policies and laws to protect consumers from abusive, fraudulent, or harmful corrupt business practices;
- c) 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 for assistance;
- d) Monitor and implement measures to promote transparency and accountability in markets;
- e) Prepare, publish and disseminate studies and reports on competition to inform and guide the industry and consumers; and
- f) Promote international cooperation and strengthen Philippine trade relations with other countries, economies, and institutions in trade agreements.

WHEREAS, pursuant to the provisions of Section 1 of the Executive Order, the following guidelines are hereby promulgated to govern the OFC's exercise of its mandate and functions.

Rule 1. General Provisions

Section 1. Coverage

These Guidelines shall apply to all investigations conducted by the OFC on cartelization, monopolies and combinations in restraint of trade as defined in competition laws including but not limited to the following:

- 1.1 Section 19 of the Constitution (February 1987);
- 1.2 Act to Prohibit Monopolies and Combinations in Restraint of Trade (1 December 1925);
- 1.3 Revised Penal Code, as amended (8 December 1930);
- 1.4 Public Service Act, as amended (7 November 1936);
- 1.5 New Civil Code (18 June 1949); and
- 1.6 Amending the Law Prescribing the Duties and Qualifications of Legal Staff in the Office of the Secretary of Justice (20 June 1964).

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Rule 2. Scope of the Investigation

Investigations shall be limited to the particular acts or omissions subject of a complaint or a report without precluding acts or omissions which may be discovered by or reported to the OFC in the course of the investigation.

Complaints and reports involving violations may be referred to the appropriate government agency or sector regulator. The OFC may initiate investigation *motu proprio*, as allowed by law, when certain facts have been brought to its attention, or further to information gathered in the context of sector inquiries, informal meetings with industry or the monitoring of markets, or on the basis of information exchanged with sector regulators.

Investigation as used herein refers to the fact-finding examination, study or inquiry for determining whether the allegations in a complaint or findings in a report may be the subject of administrative, civil and/or criminal action. On another level, the term may refer to the investigative powers and authority conferred by Republic Act No. 4152².

Rule 3. Commencement of Action

Section 1. Complaint

The OFC may commence an investigation upon complaint under oath from any person. The complaint shall contain among other things the following:

- 1.1 The names and addresses of the complainant and respondent;
- 1.2 A brief statement of the facts;
- 1.3 Sworn statement/s of witnesses and/or documentary evidence;
- 1.4 The action or remedy requested;
- 1.5 A declaration of any action involving the same issue or claim filed or pending with any court, tribunal, quasi-judicial or government agency; and

² Amending the Law Prescribing the Duties and Qualifications of Legal Staff in the Office of the Secretary of Justice approved on 20 June 1964.

- 1.6 Such other matters or details that shall guide the OFC in appraising the nature of the complaint and the extent of the violation/s committed.

The OFC is not precluded from receiving any form of complaint as basis for inquiry or further study.

A report received by the OFC from a government agency on acts allegedly committed, accompanied by a written request for the conduct of an investigation, is considered a valid complaint under these Guidelines.³

Report as used herein shall refer to the document prepared by OFC and/or any government agency⁴, containing a written statement/narration of the findings and/or recommendations on alleged violation of competition laws.

Section 2. When and Where to File a Complaint

Complaints shall be filed with the OFC or appropriate sector regulator.

Section 3. Withdrawal of the Complaint

The withdrawal of a complaint shall not result in its outright dismissal. Where there is sufficient basis or merit to the allegations in the complaint, or where there is documentary evidence that would tend to prove the act or acts complained of, the investigation shall proceed accordingly.

Section 4. Action on the Complaint

An investigation shall be commenced upon approval of the OFC Head based on a complaint that is sufficient in form and substance.

In instances where a complaint raises issues that are already pending before a court, tribunal and/or another government agency, the

³ Ibid.

⁴ Defined as "any department, bureau or office of the national government, or any of its branches and instrumentalities, or any political subdivision, as well as any government-owned or controlled corporation, including its subsidiaries, or other self-governing board or commission of the government" under Section 2, Administrative Order No. 292 "Administrative Code of 1987"

OFC, after obtaining necessary information from the court, tribunal and/or government agency concerned, may proceed with the investigation consistent with existing laws.

Section 5. Conduct of Investigation

All cases shall be subject to an initial assessment phase to determine the necessity of further investigation. During this phase, the OFC may make use of investigative measures such as requests for information.

The request for information shall be addressed in writing to the respondent or any person or entity which may have information relevant to the case, indicating the legal basis and the purpose of the request as well as the sanctions for supplying incorrect information as provided by law. Reply to request for information shall be made to the OFC within 10 calendar days, provided, the period may be extended for another 10 calendar days upon a written request to and subject to approval of the OFC.

The OFC has the authority to require the submission of additional documents from the complainant. Subject to the necessary processes, including the issuance of search warrants by the court, the OFC may enter premises and inspect any pertinent document and/or record pursuant to the purpose of the investigation and secure certified true copies of any document necessary for the conduct of the investigation and/or the preparation of the investigation report.

As allowed by law, the OFC shall sanction any act committed by the respondent under investigation or by any of its directors, officers, employees or agents, that is intended to or shall prevent, impede or obstruct the exercise by the investigator/s of the foregoing authority.

The OFC shall conduct investigation within 90 calendar days upon approval by the Head.

Section 6. Case Referral and Joint Investigation

Complaints involving purely technical regulation filed with the OFC shall be formally endorsed to the appropriate sector regulator. The procedure for notification and referral shall be governed by the

Guidelines for OFC – Sector Regulators Cooperation and Guidelines for Complaints Intake and Case Handling.

There shall be an *ad hoc* team composed of sector regulators and chaired by the OFC, to undertake joint investigation of cases, consistent with existing laws. The procedure for joint investigation shall be governed by the Guidelines for OFC – Sector Regulators Cooperation and Guidelines for Complaints Intake and Case Handling.

Rule 4. Investigation Report

Section 1. Investigation Report

The result of the investigation shall be in writing and signed by the investigator/s who conducted the same. It shall contain the following:

- 1.1 Brief statement of the complaint;
- 1.2 Statement of facts;
- 1.3 Statement of the findings including the acts or omissions constituting violation of provisions of competition laws and pertinent laws;
- 1.4 Basis for the findings including copies of documents; and
- 1.5 Recommended actions including the filing of appropriate charges, if any.

Section 2. Period for Submission of the Report

The Investigation Report shall be approved by the OFC Head and submitted to the Secretary of Justice within thirty (30) calendar days from the termination of the investigation.

Section 3. Recommended Actions in the Report

The Investigation Report may recommend the filing of cases with the appropriate agency or entity, or require the complainant to provide additional information for further OFC action.

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Rule 5. Action on the Investigation Report

Section 1. Approval, Modification or Disapproval by the Secretary of Justice

The Secretary of Justice may approve, modify or disapprove the recommendation contained in the Investigation Report and/or direct the conduct of a re-investigation.

Section 2. Filing of Administrative, Civil and/or Criminal Actions

In the event that the Investigation Report, as approved by the Secretary of Justice, recommends the filing of administrative, civil and/or criminal charges, the OFC shall prepare and file the appropriate complaint/s within fifteen (15) calendar days upon approval by the Secretary of Justice.

Administrative cases shall be filed with the appropriate government agency while civil cases shall be filed with the court of competent jurisdiction. Criminal complaints shall be filed with the National Prosecution Service (NPS) of DOJ for preliminary investigation.

Rule 6. Consumer Protection

Section 1. Mechanism

Consistent with Section 1(b) of E.O. No. 45, the OFC shall adopt and implement a mechanism for cooperation with the Department of Trade and Industry (DTI) to investigate anti-competitive conduct within consumer welfare laws, including those that are implemented under Republic Act No. 7394 or the Consumer Act of the Philippines, Republic Act No. 7581 or the Price Act.

Such mechanism shall consider the DOJ-DTI Memorandum of Agreement (MOA) specifying measures on the promotion and protection of consumers' economic interests, along with standards for the safety and quality of consumer goods and services; distribution facilities for essential consumer goods and services; measures enabling consumers to obtain redress; and education and information programmes, among others.⁵

⁵ UNCTAD Model Law on Competition

Section 2. Exchange of Information

There shall be a free and mutual exchange of information between the OFC and sector regulators, observing the confidentiality of each case. Said exchange of information shall at all times be confidential and shall not be disclosed, communicated, or otherwise made available to any person or entity without prior consent of both OFC and the sector regulator concerned.

Rule 7. Supervision of Markets

Section 1. Sector Analysis

In accordance with Section 1(c)(d) of E.O. No. 45, the OFC shall lead the conduct of sector analysis through market studies to determine the level of competition in markets and formulate strategies to encourage business compliance with competition laws. Competition assessment shall be conducted as necessary.

Section 2. Publications

Pursuant to Section 1(e) of E.O. No. 45, the OFC shall publish a range of information, education and communication (IEC) materials.

Rule 8. Miscellaneous Provisions

Section 1. Confidentiality

The entire investigation proceedings under these Guidelines shall be confidential in nature. Among others, information containing legitimate business secrets, identity of persons who provide information to OFC, and deliberations in regard to current or still uncompleted matters shall be accorded applicable safeguards to protect their confidentiality.⁶

Any disclosure regarding the investigation or the results shall be in accordance with the provisions of applicable laws.

⁶ UNCTAD Model Law on Competition

Section 2. Repealing Clause

All other related rules and/or regulations that are inconsistent herewith are hereby repealed or amended accordingly.

Section 3. Amendatory Clause


These Guidelines may be amended as the need arises or when it becomes necessary to effect changes to conform to existing laws and/or adapt to changing conditions, in consultation with concerned entities, provided that such amendments shall in no way limit the investigative powers of the DOJ.⁷

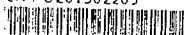
Section 4. Separability Clause

If any portion, provision or section of these Guidelines or the application thereof to any person or circumstance is held invalid by the court, the other portions, provisions or sections thereof or their application to other persons or circumstances shall not be affected thereby and remain valid.

Section 5. Effectivity

These Guidelines shall take effect on 01 March 2013.


LILIA M. DE LIMA
Secretary

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⁷ US Department of Justice Antitrust Manual