

**[MIA MEMORANDUM CIRCULAR NO. 80,
November 08, 1993]**

**POLICY GUIDELINES IN THE REGULATION OF DOMESTIC WATER
TRANSPORT SERVICES**

In line with the national policy of pursuing a program of deregulation and fostering a favorable climate for increased investments, and pursuant to Sec. 6(a) and 6 (b) of P.D. No. 474, Sec. 12(a), (b), (c), (h) and (k) of E.O. No. 125-A and Sec. 3, paragraph 2 of DOTC Department Order No. 92-587 dated 30 March 1992, the following guidelines are hereby adopted:

I

Objective

This Circular serves to provide consolidated policy guidelines intended to promote a more liberal/deregulated atmosphere for liner operations in the domestic shipping industry, within the purview of the mandate vested with the Maritime Industry Authority (MARINA) and that of existing laws and jurisprudence.

II

Coverage

This Circular shall apply to all persons, corporations, firms and entities engaged in the operation of a domestic water transportation service, for compensation, commercial or public use, involving the carriage of passengers or cargo between various ports and places in the Philippines, either as liner or tramper as the corresponding provisions herein would indicate.

III

Definition of Terms

For purposes of this Circular the following terms or phrases shall have the meanings/definitions as hereinbelow indicated:

1. Certificate of Public Convenience (CPC) An authorization issued by the MARINA to a vessel for a domestic water transportation service for commercial/public use for which no franchise, either municipal or legislative, is required by law.
2. Provisional authority (PA) The provisional or temporary permit issued by the MARINA to a vessel to operate a line or service, pending final determination of the application for issuance of Certificate of Public Convenience.
3. Liner service The operation of domestic water transportation which publicly offers services without discrimination to any user, have regular ports of

call/destination and have fixed sailing schedules and frequency.

4. Tramp service The operation of a freight vessel which mostly does not run in any regular line but takes cargo wherever the shippers desire, are hired on a contractual basis or chartered by one or few shippers under mutually agreed terms and usually carries full cargoes of bulky commodities.

5. Financial capability As a requisite to the grant of CPC, shall constitute the availability of funds to initiate/establish and maintain its operation and the availability of sufficient financial reserves to meet claims arising from accidents or the existence of sufficient insurance coverage.

6. Public interest/convenience The common good; that which is for the benefit of all people or a majority thereof.

7. Prior operator rule The priority given to an existing authorized operator, in a route, and in each of the segments of the route, by virtue of a CPC/PA issued.

8. Prior applicant rule The priority given to the first applicant, among the mass of various applicants, for a CPC.

9. Protection of investment the protection and conservation of investment which have already been made by public service operators.

10. Wholesome/Constructive competition When two (2) or more operators in a route/link compete for a share of the passenger and/or freight market on the basis of quality and efficiency in services, types of facilities and accommodations provided, and/or level of rates charged, resulting in the promotion of public interest and satisfaction and without endangering the financial viability of operations therein.

11. Franchised operator Any operator that is issued a CPC.

12. Authorized operator Any operator that is issued either a PA or a CPC.

13. Authorized route The pattern of ports of call starting and ending on the same port, as indicated in an existing CPC/PA granted by this Authority to a liner vessel.

14. Innovative/Technologically-Advanced service A type of vessel or shipping service/shipping trade which is not yet being provided in a given route.

15. Cost-effective/Competitive shipping service When two or more operators in a given route are charging rates commensurate to the level and quality of shipping service being provided, such that any variation in the level and quality of shipping service provided among the operators will result in corresponding variations in rates being charged by each operator. If the rates charged by the existing operators in a route do not vary despite differences in service, or are unusually high, or the service rendered is at the minimum level of the prescribed standards and not commensurate with the rates being charged, there is deemed to be lack of effective competition, in which case, effective competition would be fostered by the entry of a new operator which can offer better service at the given prevailing rate or lower rates at the same level of service being provided.

16. Monopoly A situation where there is lack of effective competition, or a case when a market is served either by only one (1) franchised operator; by a group of franchised operators beneficially owned by a single individual, family or a collusion; or by a cartel.

17. Developmental route An economically desirable route not being served presently by any franchised operator offering the same type of service. This suggests that the route/link may be considered developmental in respect to ship's technology, e.g. the route may be considered developed as far as banca services are concerned but considered developmental for conventional cargo vessels, or considered developed as far as conventional cargo vessels but considered developmental for container operations. Economic desirability in this sense, is established when the areas served have agricultural, tourism, mining, or industrial growth potentials or the areas served need the link with developed regions for their subsistence and development.

18. Reasonable spacing of sailing schedules The minimum time difference to be allowed for the departure of vessels in a given port, after taking into account such consideration as type of service, loading/unloading procedures, port facilities, public interest/convenience, etc.

19. Withdrawal from service The suspension of a vessel's services in its authorized route or portions thereof.

20. Abandonment from Service The unauthorized withdrawal of a vessel's services by the ship operator/shipowner in its authorized route, or portions thereof, for a period of four (4) months or more.

21. Vessel rerouting The changing of the authorized routing pattern of a vessel.

22. Vessel replacement/substitution The deployment of a vessel to serve as replacement or substitute for an existing vessel authorized to operate in a given route.

23. Addition/Expansion The introduction of an additional vessel, an increase in the vessel's sailing frequency in a given route, a replacement of a franchised vessel with a bigger vessel, or an increase in effective capacity of the franchised vessel through alterations, such as jumboization or rearrangement of the passenger accommodation plan.

24. Authorized sailing frequency The number of trips/links a vessel can make at a given period of time as indicated in its PA/CPC.

25. Fork tariff system A system wherein rates are allowed to fluctuate between carefully defined upper and lower limits from a given reference/indicative rate.

26. Class A As used in commodity classification for rates determination, includes generally high value manufactured goods.

27. Class B and C As used in commodity classification for rates determination, includes generally lower value manufactured goods, raw materials and agriculture

products.

28. Class C (BASIC) Refers to rice, palay, corn, corngrits, fruits and vegetables under the commodity classification.

IV

Policy Guidelines on the Issuance of Certificate of Public Convenience (CPC)

A. General Policy Guidelines

1. Requisites Before a CPC/PA may be Granted - As provided for under Sec. 16 (a), Chapter II of the Public Service Act (C.A. No. 146, as amended), the following requisites must be complied with before any CPC/PA may be granted;

- a. The applicant must be a citizen of the Philippines, or a corporation or co-partnership, association or joint-stock company constituted and organized under the laws of the Philippines, at least sixty per centum (60%) of stocks or paid-up capital of which belongs entirely to the citizens of the Philippines.
- b. The applicant must be financially capable of undertaking the proposed shipping service and meeting the responsibilities incident to its operations; and
- c. The applicant must prove that the proposed operation of the public service, and the authorization to do business, will promote public interest in a proper and suitable manner.

In addition to the above requisites, no vessel shall be issued a CPC/PA unless it has complied with prescribed safety requirements and service standards, as embodied in related rules, regulations and Memorandum Circulars.

2. Public interest or public convenience shall be the cardinal or primordial consideration in the grant of CPC/PA, above any and all considerations. While it is the duty of the government, as far as possible, to protect public utility operators against unfair and unjust competition, it is nevertheless obvious that public convenience must have the first consideration.

Public interest shall therefore prevail over "prior applicant", "prior operator", and "protection of investment" considerations. Finally, reasonable/wholesome/constructive competition shall be allowed and encouraged to the extent possible.

3. The presumption of public need for a service shall be deemed in favor of the applicant, while the burden of proving that there is no need for a proposed service shall be with the oppositors.

B

Specific Policy Guidelines on Entry Into and Exit Out of the Industry

The control in entry into and exit out of the industry shall be liberalized to introduce and/or enhance the level of competition in terms of rates charged and the quality of service rendered by domestic water transportation operators as herein provided.

1. Opening-up of Monopolized Routes - There shall be a minimum of two (2) operators in any route/link. Routes/links presently serviced by only one (1) operator, or monopolized as defined, shall be open for entry to additional operator(s).

2. Encouraging Entry Into Developmental Routes - The provision of shipping services in developmental routes, as defined, shall be encouraged. An operator who pioneers in the provision of a certain technological level/type of shipping service in a developmental route, shall be authorized to charge market-accepted freight and passage rates differing from the authorized fork-tariff, if availed of; Provided, that the operator shall apply with the MARINA for the adjustment in or adoption of such rates, the approval of which shall be accordingly granted; and Provided, further, that after five (5) years of such operation, the continued authorization of such rates, or adjustments thereof, shall be dependent on an evaluation undertaken by the MARINA.

3. Deregulating Entry of Newly-Acquired Vessels Into Routes Already Served by Franchised Operators - Shipping companies/operators who acquire a vessel through importation, bareboat charter with option to purchase, lease-purchase, or local construction, shall be granted a PA/CPC and allowed to operate such vessel in any route, even if already being served by existing franchised operators, including developmental routes; Provided, that the prescribed application for CPC has been filed, and the basic requisites prior to issuance thereof have been complied with; Provided, further, that upon filing the application for CPC, the presumption of public need shall be accorded in favor of the applicant, especially but not necessarily when any of the following conditions shall be shown to obtain:

- a. The proposed operation shall introduce innovative, technologically-advanced, or pioneering shipping services in the route applied for, such as, but not limited to, the deployment of fast ferries, cruise vessels, container vessels and RoRo vessels, or the employment of modern/efficient on-board cargo handling equipment as an integral part of the vessel's operation;
- b. The proposed operation shall introduce improvements in the quality of service being provided in the applied route/link.
- c. The vessel proposed to be deployed shall serve as an improvement over the existing vessels operating therein, either in terms of the vessel's age, size/capacity, hull material and other vessel technical features.
- d. The proposed operation shall foster cost-effective/competitive shipping service in the route proposed to be served;
- e. The proposed operation shall service priority tourist links as identified by the Department of Tourism in its Tourism Master Plan.
- f. The route/link applied for warrants additional operators/services, as determined by this Authority, resulting in public invitations for additional services therein and/or there is a duly verified and legitimate public clamor for additional shipping services therein and it has been determined that existing authorized operators in the route/link have not been sensitive to an increase in demand by offering to increase capacity only after another operator has