

[MIA MEMORANDUM CIRCULAR NO. 71, October 22, 1992]

IMPLEMENTING GUIDELINES ON THE DOTC DEPARTMENT ORDER NO. 92-587 DEFINING THE POLICY FRAMEWORK ON THE REGULATION OF TRANSPORT SERVICES

Pursuant to Section 3, paragraph 2 of DOTC Department Order No. 92-587 dated 30 March 1992 defining the policy framework on the regulation of transport services, the following guidelines in implementation thereof are hereby promulgated:

I

Scope of Coverage

The policy guidelines set forth under this Circular shall be limited to persons, corporations, firms or associations owning or operating vessels for transportation of passengers or goods, or both, for compensation, either as a liner or tramp service.

Liner service shall refer to the operation of domestic water transportation facilities which: (i) offer their services to the public indiscriminately; (ii) have regular ports of call/destination; (iii) have fixed sailing schedule (arrival-departure pattern) and sailing frequency, and (iv) charge passenger/freight rates fixed by the MARINA.

Tramp service shall refer to the transportation of cargoes on a contractual basis catering only to bulk cargoes of individual shippers/consolidators.

II

Definition of Terms

For purposes of this Circular, the following terms or phrases shall have the meanings/definitions as herein below:

a. **Certificate of Public Convenience:** an authorization issued by the MARINA for the operation of a domestic water transportation service for public use for which no franchise either municipal or legislative, is required by law.

b. **Provisional Authority/Special Permit:** the provisional or temporary permit issued by the MARINA to operate a line or service, pending final determination of the application for issuance of Certificate of Public Convenience. The following requisites should, however, be present: (1) that the case cannot be decided at once; and (2) that there is an urgent public need to be met.

c. **Filipino citizenship:** that the applicant for a Certificate of Public Convenience is a citizen of the Philippines or a corporation, partnership, association or joint-stock company constituted and organized under the laws of the Philippines, of which at least sixty percent (60%) of its capital stock or paid-up capital belongs entirely to

Philippine nationals.

d. **Financial capability:** the capability of the applicant/operator to establish/initiate/maintain/sustain proposed/existing operations of the service and to meet claims arising from accidents.

e. **Public interest:** the benefit for all the people.

f. **Authorized route:** the pattern of ports of call starting and ending on the same port, indicated in an existing SP/PA/CPC granted by MARINA to a vessel.

g. **Monopoly:** the existence of operation of one (1) franchised operator or a group of franchised operators in a particular route, whose actions or practices result in a lack of effective competition (which has the effect of a monopoly).

h. **Developmental route:** route that handles domestic traffic serving a limited area, e.g., developing mining and manufacturing activities. These areas are necessarily called developmental, either because (1) they have agricultural, tourism, mining, industrial potentials, or (2) they need the link with developed regions for their subsistence and development. Operations along these routes are economically desirable, but not necessarily financially viable.

i. **Franchised operator:** any operator that is issued a Certificate of Public Convenience.

j. **Prior operator:** the priority of an existing authorized operator in a route and in each of the segments of the route by virtue of a PA/CPC.

k. **Prior applicant:** the first applicant who is given the priority among the mass of various applicants for a Certificate of Public Convenience.

l. **Protection of investment:** the protection and conservation of investments which have already been made by public service operators.

m. **Withdrawal from service:** the suspension of a vessel's services in its authorized route or portions thereof.

n. **Abandonment from service:** the unauthorized suspension 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.

o. **Vessel rerouting:** the changing of the authorized routing pattern of a vessel.

p. **Vessel replacement/substitution:** the substitution of lost, obsolete, overaged, inefficient or unseaworthy tonnage.

q. **Addition/expansion:** the introduction of an additional vessel or an increase in the vessel's sailing frequency in a given route or replacement with a bigger vessel.

r. **Scrapping:** the permanent withdrawal of a vessel from all forms of shipping services for purposes of breaking it up or selling it to foreign buyers.

s. **Authorized sailing frequency:** the number of trips/links a vessel can make at a given period of time as indicated in its SP/PA/CPC.

t. **Fork tariff system:** a system wherein rates are allowed to fluctuate between carefully defined upper and lower limits.

u. **Class A:** generally high value manufactured goods.

v. **Class B & C:** generally lower value manufactured goods, raw materials and agriculture products.

w. **Class C (Basic):** rice, palay, corn, corngrits, fruits and vegetables.

x. **Bulk shipping industry:** an industry which specializes in the transport of large cargo parcels, i.e., those that fill a whole ship.

y. **Bulk cargo:** any cargo that is transported by sea in large consignments.

z. **Consolidation:** the process of despatching as one overall consignment under an Agent/Freight Forwarders sponsorship by Air, Rail, Container or Road haulage unit, a number of individual compatible consignments from various consignees to various consignors.

aa. **Consolidator:** a person or company (Freight Forwarders) undertaking consolidation or consignment.

III

Requisites before a Certificate of Public Convenience May Be Granted

Per Section 16(a), Chapter II of the Public Service Act (C.A. No. 146, as amended), the following requisites must be complied with before any certificate may be granted: (1) 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, sixty percent (60%) at least of the stock or paid-up capital of which belongs entirely to citizens of the Philippines; (2) the applicant must be financially capable of undertaking the proposed shipping service and meeting the responsibilities incident to its operation and (3) the applicant must prove that the operations of the public service proposed and the authorization to do business will promote the public interest in a proper and suitable manner.

IV

Policy Guidelines on the Issuance of Certificates of Public Convenience

The issuance of a Certificate of Public Convenience is determined by public need. 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 oppositor(s).

Subject to the underlying principle that the interest of public service shall be paramount, the following guidelines shall govern the issuance of a Certificate of

Public Convenience, to all liner operators, to wit:

A. Entry Into and Exit Out of the Industry — The control in entry into and exit out of the industry shall be liberalized to introduce or enhance the level of competition in terms of the rates charged and the quality of service rendered by domestic water transportation operations as provided.

1. On the entry of Vessels and/or Operators in the interisland trade routes

1.1 To a Monopolized Route — There shall be a minimum of two (2) operators in any route/link. Links/routes presently serviced by one (1) operator shall be open for entry to at least one (1) additional operator.

1.2 To a Developmental Route — Operators that shall develop a link/route where there are no existing authorized operators/services shall be afforded protection of investment for a maximum period of five (5) years, after which, the link/route shall be open for entry to at least one (1) additional operator.

1.3 To an Already Established Route Served by Franchised Operator(s) — The entry of any additional operator in links/routes presently serviced by several existing authorized operators shall be allowed in, but not limited to, any of the following cases:

1.3.1 The new entrant may be able to provide a more cost-effective, competitive service than the existing/authorized operators.

1.3.2 The new entrant shall introduce quality of service improvements or innovative/technologically-advanced shipping services superior to those provided by existing/authorized operators.

1.3.3 The route/link warrants additional capital or it has been determined that existing authorized operator therein have not been sensitive to an increase in demand or offers to increase capacity only after another operator has offered to increase capacity.

1.3.4 New entrants will be admitted in routes where the actions or practices of existing/authorized operators result in the lack of effective competition.

1.3.5 The existing authorized operator(s) has abandoned its operation.

1.3.6 The existing authorized operator(s) has been violating the Public Service Law or the terms and conditions of its Certificate of Public Convenience.

2. On the abandonment/withdrawal/suspension of service

2.1 By an unauthorized total or partial abandonment/withdrawal/suspension of a vessel's services in its authorized route or portions thereof for a period of four (4) months or more, an operator may forfeit his right to his certificate.

- 2.2 An operator shall be allowed to withdraw/suspend his services in a route/link provided that the operator files a notice of withdrawal/suspension with the MARINA fifteen (15) days prior to such withdrawal/suspension and after informing the public of such withdrawal/suspension.

3. On vessel replacement/substitution and addition/expansion of shipping services by an existing/authorized operator

- 3.1 Existing/authorized operators may increase their capacity through replacement with a bigger vessel, the introduction of additional vessels or the increase in frequency of existing vessels after an application is filed with the MARINA.

- 3.2 No limits shall be placed on the capacity of a replacement vessel vis-a-vis the replaced vessel's capacity.

4. On vessel re-routing/amendment of authorized route/schedule/sailing frequency

- 4.1 Any change/amendment to the authorized routing pattern of a vessel can be undertaken by an existing authorized operator through the following: (i) omission/deletion of port(s), (ii) addition of another port(s), (iii) omission and subsequent addition of port(s), (iv) changing sequence of port calls, (v) retention of authorized routing pattern but with addition of one or more ports, and (vi) introduction of an entirely new route.

- 4.2 On amendments/adjustment of schedule and frequency of port calls, the MARINA shall see to it that an operator's proposed amendment in schedule will not conflict with those of the existing operator(s).

- 4.3 Vacated port(s)/link(s)/route as a result of the vessel rerouting proposal shall, likewise, be looked into insofar as adequacy/sufficiency of the remaining existing shipping services is concerned.

5. On quality of shipping service

- 5.1 MARINA Memorandum Circular No. 65 covering the Minimum Service Standards for Philippine Registered Interisland Passenger Vessels provides a set of standards to be used as basis for assessing the quality of existing shipping service. Compliance with this set of standards will ensure acceptable quality of shipping service for passenger comfort and convenience.

- 5.2 A link/route shall be declared warranting improvement in services subject to the following conditions: