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RATIONALIZATION OF THE INTER-ISLAND SHIPPING OPERATIONS

MIA MEMORANDUM CIRCULAR NO. 26, September 01, 1982

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Pursuant to the MARINA-BOT Memorandum of Agreement dated 26 February 1982, and the MARINA-BOT-PPA-PCG Memorandum of Agreement dated 17 March 1982, and in line with the government program on the rationalization of inter-island shipping operations, the following policy guidelines are hereby adopted:

1. Scope of Coverage — The concept of rationalization shall be limited to persons, corporations, firms, or associations owning or operating vessels which:

a. offer their services to the public indiscriminately;

b. have regular ports of call/destination;

c. have fixed sailing schedule (arrival-departure pattern) and sailing frequency; and

d. charge fees fixed by the Board of Transportation.

2. Definitions — For purposes of this Circular, the following terms or phases shall have the meanings/definitions as hereinbelow:

a. Authorized route: the pattern of ports of call starting and ending on the same port, indicated in an existing PA or CPC granted by BOT to a vessel.

b. Deviation from authorized route: the unauthorized deletion of a regular port or ports of call from a vessel's authorized itinerary; the unauthorized call at a port or ports not included in a vessel's authorized route; or any change in the sequence by which the ports of call are serviced.

c. Authorized sailing frequency: — the number of round trips a vessel can make at a given period of time as indicated in its PA/CPC.

d. Sailing frequency deviation: the increase or reduction in the vessel's authorized sailing frequency for a specific period of time.

e. Sailing schedule deviation: any change in the vessel's departure by more than two (2) hours for short trips (less than 12 hours voyage) and three (3) hours for long trips (more than 12 hours voyage) vis-a-vis the vessel's schedule authorized by BOT or as published by the shipowner or ship-operator.

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

g. Abandonment of 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.

h. Rerouting: changing the authorized routing pattern of a vessel.

i. Replacement: the substitution of lost, obsolete, overaged, inefficient, or unseaworthy tonnage to be sold abroad or scrapped, the replacement of which should not exceed 150% of the replaced vessel's rated capacity.

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j. Addition/ Expansion : the introduction of an additional vessel in a given route, or alternatively, the deployment of a replacement vessel the size of which exceeds the replaced vessel's rated capacity by more than 50%.

k. 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.

l. Lay-up: the withdrawal of a vessel and trying it up on anchor for a period of one month or more and where only a skeleton crew is retained to maintain the equipment and machinery on board.

m. Modernization: the introduction of later-built tonnage which provides an innovative and a more efficient method of cargo loading and stowage or type of service.

n. 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.

3. Policy Statements on Change or Deviation from Authorized Routes, Sailing Frequency and Schedules.

All persons, partnerships, corporations, or other entities owning or operating vessels engaged in coastwise shipping within the contemplation of this Circular shall observe their authorized routes, sailing frequency, and schedules. Any vessel that deviates from its authorized route, sailing frequency; or schedules without appropriate authority shall be penalized in accordance with the Public Service Law. Any service disruptions shall be avoided as much as possible.

4. Policy Statement on Abandonment/Withdrawal/Suspension of Service. — Abandonment/withdrawal/suspension of service shall not be allowed without authority from the BOT. MARINA may, in the interest of the public, recommend that the shipowner/ship-operator continue the service for a month after notification of such abandonment/withdrawal/suspension of service or even for a longer period of time, as it may deem necessary to avoid disruption of service.

A vessel withdrawn from its authorized route due to market conditions therein may not be deployed in any other liner route unless authority to do so has been acquired from the BOT. The MARINA shall, whenever practicable, prevent a liner operator from reserving the right to re-service a liner route when market conditions improve since the government protects only those that are vigilant in serving the public interest.

In the case of a liner operator that does not altogether cease operations in his authorized route(s) or portions thereof but fails to provide regular services therein, the MARINA may require such operator to maintain a minimum service level, failing which, another operator may be allowed to service the route to enable the public to receive adequate service.

5. Policy Statement on Vessel Rerouting — Vessel rerouting is discouraged and becomes illegal if such rerouting is pursued without the corresponding amendment of the vessel CPC/PA. In order to protect the public interest, the government shall limit the frequency of applications for vessel's CPC/PA or amendment thereof for re-routing purposes. To facilitate the determination of supply and demand level of shipping services, the government may seek the assistance of the shipping association or conference. Any or all links omitted by a shipping company as a result of its rerouting scheme shall be declared open for market entry and applications from other operators shall be entertained on a case-to-case basis and on a first-come-first-served basis. Priority shall be given to the other existing authorized operators over new entrants.

6. Policy Statement on Vessel Replacement and Modernization — In order to protect the interest of existing operators, the government shall regulate vessel acquisitions for purposes of modernization.

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The first option to introduce modern tonnage for modernization or replacement rests with prior operators in the route.

Approval for the acquisition by an existing operator of modern tonnage to replace an existing vessel shall be granted provided that:

a The replacement a vessel's rated capacity should not exceed the replaced vessel's rated capacity by more than 50%. (Beyond this, the vessel is considered as an expansion.)

b. Vessels to be replaced with ages beyond thirty (30) years shall be scrapped/sold to foreign buyers.

c. Vessels to be replaced but not scrapped may be rerouted to a MARINA-approved route.

The replacement vessel shall not be replaced by another vessel within a period of three (3) years. A vessel acquisition application is supported by long-range operational plans, 5-year cash flow, etc.; hence, the vessel should not be replaced immediately. This will encourage good planning and discourage shipping lines from using this justification in replacing their tonnage in other routes.

Approval for the acquisition of modern tonnage to expand a traditional operator's capacity in the route shall be given only after ample proof that there exists excess demand that is largely unserviced, i.e., undertonnaging; and that even after the introduction of the vessel in the route, the minimum break-even bad factor for existing vessels providing related types of services is guaranteed.

In no way shall the government compromise existing operators providing related types of service unless it can be proven that there is a general deterioration of service in terms of quality and reliability. All operators in a given route shall be given equal opportunity and advance notice on the need to modernize and, if after a period of six (6) months, no applications for the acquisition of vessels to fill such need is filed, applications from outside operators/new entrants may be entertained on a case-to-case basis and on a first-come-first-served basis. Priority shall be given to existing operators over newcomers into the industry.

7. Policy Statement on Ports Sharing the Same Market — Shipping lines authorized to call on a port sharing the same market with other ports may be authorized to shift operations to the other port, in order to maintain the efficiency or regularity of service.

The specific ports sharing the same market shall be identified by the private sector and verified by the MARINA. Initially, the following ports have been identified as sharing the same market:

1. Pulupandan-Banago-Bacolod

2. Batan-Kalibo-Dumaguit — New Washington

3. Nasipit-Butuan

4. Polloc-Cotabato

A shipping line authorized to call in a port sharing the same market with other ports may be allowed to shift operations to the other ports only if:

1. Port conditions and services in the former port limit the vessel's capability to provide efficient services;

2. Considerable savings in the transport cost component of the commodity/commodities transported shall result from the shift in operations; and

3. Public interest is not jeopardized as a result of the shift in operations.

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The shift in operations shall be subject to the approval of the MARINA and BOT and should not result in the expansion of a company's offered capacity in a particular market unless there exists demand that is largely unserviced, i.e., . undertonnaging.

8. Policy Statement on Quality of Service. — The "prior applicant", "prior operator" and "protection of investment" rules will generally be observed. However, they cannot take precedence over public interest in cases where the resulting competition will benefit the public through improvement in services, overcapacity or underutilization in the subject route/link notwithstanding.

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

1. The public, individually or collectively — in the latter case through their recognized organization or legally constituted or authorized representatives/institutions — shall petition the MARINA on the need to improve the services of vessel(s) plying the routes/links in the affected area.

2. A public hearing shall be conducted by the concerned government agencies, i.e., MARINA. BOT, PCG, PPA, and/or MOTC, wherein the views and opinions of all affected parties shall be heard, in cases where there are several existing operators in the subject route/link.

3. In cases where the subject route/link is serviced by only one (1) operator, the MARINA shall dispense with the public hearing and solicit the comments of said operator.

4. An independent survey/investigation shall be conducted by the MARINA to ascertain the validity of the need for an improvement in services. MARINA may consult the shipping association on the parameters against which quality of service may be evaluated. MARINA may also include shipping association members in the fact finding mission and/or an inventory system as may be ascertained to determine compliance with quality of service standards.

An interested applicant on a route/link declared warranting an improvement of services shall make appropriate application with BOT, copy furnished MARINA, and the latter shall evaluate and make its recommendation based on the following:

1. Ability to improve the services in the subject route/link.

2. The introduction of the vessel will not involve the acquisition of a vessel, by importation.

3. The employment of a proposed vessel for this route/link shall not be the detriment of the public presently serviced by the subject vessel.

Upon evaluation that the applicant is deemed qualified, MARINA shall recommend that said applicant be granted a provisional authority to operate in the subject route/link for a three-month period.

The affected operator in the subject route/link, within the period of provisional operation of the qualified applicant, shall be obligated to improve its services within three months, failing which, it shall be subjected to revocation proceedings of its authority/franchise to operate in the subject route/link; and the provisional operator may subsequently be granted a permanent authority to operate in the subject route/link.

The affected operator in improving its services may introduce a vessel in the subject route/link, as follows:

1. Replacement, subject to the policy and implementing guidelines on replacement and modernization.

2. Rerouting, subject to MARINA evaluation and BOT approval.

The MARINA , shall continuously monitor the subject route/link and if necessary conduct another survey/investigation on quality of service.

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This Circular shall take effect on 1 September 1982.

Adopted: 1 Sept. 1982

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