

MEMORANDUM CIRCULAR NO. 26

TO : SHIPPING COMPANIES , SHIPOWNERS AND SHIP-OPERATOR

SUBJECT : RATIONALIZATION OF THE INTER ISLAND SHIPPING OPERATIONS

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 the 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 of associations owning and /or operating vessels which:
 - 1.1 offer their services to the public indiscriminately ;
 - 1.2 have regular ports of call / destination ;
 - 1.3 have fixed sailing schedule (arrival – pattern) and sailing frequency ; and
 - 1.4 changes fees fixed by the Board of Transportation.

2. Definitions – For purposes of this Circular , the following terms of phrases shall have the meanings / definitions as herein below:
 - 1.1 Authorized routes the pattern of ports of call starting and ending on the same port . Indicated in an existing PA/CPC granted by BOT vessel.
 - 1.2 Deviation from the authorized route the unauthorized deletion of a regular port of ports call from a vessel ‘s authorized itinerary ; the unauthorized call at a port or ports included in a vessel ‘s authorized route ; and /or any change in the sequence by which the ports of call are serviced .
 - 1.3 Authorized Sailing Frequency : the number of round trips vessel can make at a given period of time as indicated on its PA/CPC.

- 1.4 Sailing Frequency Deviation - the increase or reduction in vessel authorized sailing frequency for a specific period of time .
- 1.5 Sailing Schedule Deviation: any change in the vessel departure 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-à-vis the vessels scheduled authorized by BOT or as published by the ship owner or ship operator.
- 1.6 Withdrawal from Service the suspension of a vessel 's services its authorized route or portions thereof .
- 1.7 Abandonment of Service: the unauthorized suspension of a vessel's service by the ship operators / ship owners in its authorized route or portions thereof for a period of four (4) months or more.
- 1.8 Re routing changing the authorized routing pattern of a vessel
- 1.9 Replacement the substitution of lost , obsolete, over aged, 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
- 1.10 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%.
- 1.11 Scrapping the permanent withdrawal of the vessel from all shipping services for purposes of breaking it up or selling it to foreign buyers.
- 1.12 Pay up the withdrawal of the vessel and tying it up on anchor for a period of one month or more and where only skeleton crew is retained to maintain the equipment and machinery board.
- 1.13 Modernization the introduction of later built tonnage which provides an innovative and more efficient method of cargo loading and stowage and /or type of service.
- 1.14 Prior Operator the priority of an existing authorized operator in a route and in each of the segment of the route by virtue of a PA/CPC.

3. POLICY STATEMENT ON CHANGE OR DEVIATION FROM AUTHORIZED ROUTES, SAILINGS FREQUENCY AND SCHEDULES

All person partnerships , corporation or other entities owning or operating vessel engaged in coastwise shipping within the contemplation of this Circular shall observe their authorized routes , sailing frequency and schedules. Any vessel that deviate from its authorized route , sailing frequency and/or schedules without appropriate authority shall be penalized in accordance with the Public Service Law. Any service shall not 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 BIR. Marina may, in the interest of the public, recommended that the ship owner / ship operator continue the service for a month after notification of such abandonment / withdrawal / suspension of service even for a longer period of time, as it may deem necessary to avoid disruption of service.

A vessel withdrawn from it authorized route due to market condition 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 condition improve since the government protect only those that are vigilant in serving the public interest.

In the case of liner operator that does not altogether cease operation for 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 the adequate service.

5. POLICY STATEMENT ON VESSEL RE ROUTING – Vessel re routing is discouraged and becomes illegal if such re routing 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 application for vessels CPC/PA. or amendment thereof for re routing purposes . To facilitate the determination of supply and demand level of shipping service , the government may seek the assistance of the shipping association or conference . Any or all links omitted by shipping company as a result of re routing scheme shall be declared open for market entry and applications from other operators shall be entertained on case to case basis on the 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 acquisition for purposes of modernization.

The first option to introduce modern tonnage for modernization or replacement 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 :

1. The replacement vessel's rated capacity should not exceed the replaced vessel rated capacity by more than 50 % (Beyond this , the vessel is considered as an expansion)
2. Vessel to be replaced with ages beyond thirty (30) years shall be scrapped / sold to foreign buyers .
3. Vessel to be replaced but not scrapped may be re routed 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 a long range operational plans , 5 years cash flow , etc.; hence , the vessel should not be replaced immediately . This will encourage good planning and discourage the shipping lines from using this justification in replacing heir tonnage in other routes.

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

In no way shall the government compromises existing operators providing related types of services unless it can be proven that there is general deterioration of services 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 application for the acquisition of the vessel to fill such as need hulled , applications from outside operators / new entrants may be entertained on a case to case basis and on the first come first served basis . Priority shall be given to existing operators over new comers 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 port may be authorized to shift operation to the other port, in order to maintain the efficiency or regularity of service.

The specific port 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 – Dumaguít- New Washington
- (3) Nasipat – Butuan
- (4) Polloc – Cotabato

All shipping line authorized to call a port sharing the same market other ports may be allowed to shift operation to the other ports only if:

- (1) Ports condition 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 operations ; and
- (3) Public interest is not jeopardized as a result of the shift operations.

8. POLICY STATEMENT ON QUALITY OF SERVICE

The “prior applicant” “prior operator” and “ protection of investment” rules will generally be observe . However , they cannot take precedence over public interest in cases where the resulting competition will benefit the public through the improvement in services , over capacity or underutilization in the subject route/ link not with standing

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

- (1) The public , individually or collectively – in the latter case through their recognized organization or legally constituted or authorized representative

/ institutions shall petition the MARINA on the need to improve the services of the vessel (s) playing the route / 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 on the opinion of all affected parties shall be heard , in the case where are several existing operators in the subject route / link.
- (3) In case where the subject route / link is serviced by only one (1) operator, the MARINA shall dispense with the public hearing and solicit the comment of said operator.
- (4) An independent survey / investigation shall be conducted by the Marina to as certain the validity of the need for an improvement in services . Marina may consult the shipping association of the parameter against which quality of service may be evaluated . Marina may also include shipping association member in the fact – findings mission and /or an inventory system may ascertained to determine compliance with the quality of service standards.

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

- (1) Ability to improve the service 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 to the detriment of the public presently serviced by the subject vessel.

Upon evaluation the applicant is deemed qualified , MARINA shall recommend that the 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 the provisional operation of the qualified applicant , shall be obligated to improve its services within three months , failing which , it shall be subjected to revocation proceeding of its authority / franchise to operate the subject route / link and the provisional operator may be subsequently be granted a permanent authority to operate the subject route link.

The affected operator in improving its serviced 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) Recording , 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 .

This Circular shall take effect on 1 September 1982.

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Administrator

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Minister of Transportation
& Communications