

EXECUTIVE ORDER NO. 185

OPENING THE DOMESTIC WATER TRANSPORT
INDUSTRY TO NEW OPERATORS AND INVESTORS

WHEREAS, Section 19, Article XII of the Constitution declares that "[t]he State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed;"

WHEREAS, Presidential Decree No. 474, otherwise known as the Maritime Industry Decree of 1974, provides that:

"It is hereby declared the policy of the State to accelerate the integrated development of the maritime industry of the Philippines to attain the following objectives: (a) To increase production and productivity in the various islands and regions of the archipelago through the provision of effective sea linkage; (b) To provide for the economical, safe, adequate and efficient shipment of raw materials, products, commodities and people; (c) To enhance the competitive position of Philippine flag vessel in the carriage of foreign trade; (d) To strengthen the balance of payments position by minimizing the outflow of foreign exchange and increasing dollar earnings; (e) To generate new and more job opportunities;"

WHEREAS, Presidential Decree No. 474 likewise states that to attain the foregoing objectives, the Government, through the Maritime Industry Authority (MARINA), shall:

"(a) Adopt and implement a practicable and coordinated Maritime Industry Development Program which shall include, among others, the early replacement of obsolescent and uneconomic vessels; modernization and expansion of the Philippine merchant fleet, enhancement of domestic capability for shipbuilding, repair and maintenance; and the development of reservoir of trained manpower;

(b) Provide and help provide the necessary; (i) financial assistance to the industry through public and private financing institutions and instrumentalities; (ii) technological assistance; and (iii) in general, a favorable climate for expansion of domestic and foreign investments in shipping enterprises; and

(c) Provide for the effective supervision, regulation and rationalization of the organizational

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management, ownership and operations of all water transport utilities, and other maritime enterprises."

WHEREAS, the growth of the national economy on a sustained basis requires an efficient water transport industry to ferry passengers and cargo at reasonable and competitive rates.

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

1. The entry of new operators into the domestic water transport industry shall be liberalized to enhance the level of competition and bring about reasonable rates and improved quality of services.

1.1. Opening-up of All Routes

Public interest and public convenience call for the levelling of the playing field for all existing and new operators in the domestic water transport industry. Competition, provided it is not ruinous, should be the norm to open-up the industry to new investments and to stimulate further economic activity.

1.1.1. All routes/links shall have a minimum of two (2) operators. Routes/links presently serviced by only one (1) operator, or monopolized or cartelized as determined by MARINA, shall be open for entry to additional operators.

1.1.2. All routes/links which have been serviced by any operator for an aggregate period of at least five (5) years shall be open for entry to additional operators without limit.

1.2. Encouraging Entry Into Developmental Routes

The entry of operators in developmental routes as determined by MARINA 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 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 MARINA.

1.3. Deregulating Entry of Newly-Acquired Vessels Into Routes Already Served By Franchised Operators

1.3.1. An existing or new operator who acquires a vessel through importation, bareboat charter with option to purchase, lease-purchase, or local construction, shall be granted a Certificate of Public Convenience (CPC)/Provisional Authority (PA) and allowed to operate such vessel in any route, even if already being served by existing franchised operators for less than five (5) years, 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 of 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:

- 1.3.1.1. 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 and efficient on-board cargo handling equipment as an integral part of the vessel's operation;
- 1.3.1.2. The proposed operation shall introduce improvements in the quality of service being provided in the applied route/link;
- 1.3.1.3. 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;
- 1.3.1.4. The proposed operation shall foster cost-effective/competitive shipping service in the route proposed to be served;

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1.3.1.5. The proposed operation shall service priority tourist links as identified by the Department of Tourism in its Tourism Master Plan;

1.3.1.6. The route/link applied for warrants additional operators/services, as determined by MARINA or by pertinent local government units, resulting in public invitations for additional services therein.

This condition covers cases where there is a duly verified and legitimate public clamor for additional shipping services 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 offered to provide additional services therein; and

1.3.1.7. Where existing authorized operators have abandoned their operations in a given route.

Any oppositor to the application shall bear the burden of proving that there is no need for the proposed service.

Provided, finally, that the vessel, upon issuance of the CPC, shall continuously serve its franchised route for at least one (1) year.

1 4. Vessel Rerouting Or Amendment Of Authorized Route And Change In Sailing Schedules And Frequency

Any change or amendment to the authorized routing pattern of a vessel can be undertaken by an existing authorized operator thru the following: (1) omission or deletion of port(s); (2) addition of other port(s); (3) omission and subsequent addition of port(s); (4) changing the sequence of port calls; (5) retention of authorized routing pattern but with addition of one or more ports. Vacated port(s) or link(s)/route(s) as a result of the above shall be looked into by MARINA insofar as adequacy or sufficiency of the remaining existing shipping services is concerned:

1.4.1. Approval shall be granted to applications for any of the above forms of change or amendment

of authorized routing pattern by existing franchised liner vessels, *Provided*, that:

- 1.4.1.1. No conflict in sailing schedules with other affected operators in the applied route/link shall result therefrom, otherwise, the MARINA shall prescribe, *motu proprio*, sailing schedules that will best serve public interest and convenience;
 - 1.4.1.2. No route or link shall be left unserved by the rerouting or route amendment, unless a substitute vessel from the applicant will be deployed therein, or vessel(s) from other existing authorized operators are left serving the route/link; and
 - 1.4.1.3. Shipping service in the previous route/link has been continuously rendered by the vessel for at least one (1) year from issuance of CPC.
- 1.4.2. If the rerouting or route amendment of a vessel is caused by the deployment of a newly acquired vessel (either through importation, bareboat charter with option to purchase, lease purchase or local construction) into the authorized route of an operator, the policy of liberalized entry into any route under Section 1.3 above shall be applied.
- 1.4.3. If no newly-acquired vessel is involved and an application is filed for the rerouting or route amendment of a vessel, where an entirely new route or link will be served, a new application for CPC shall be filed and entry therein will depend on whether any of the conditions or circumstances enumerated in Section 1.3 above has been proven to obtain. Priority shall, however, be given to newly-acquired vessels brought into the fleet, subject to Section 1.3, in the grant of CPC to a given route.
- 4.4. In cases where only a temporary authority has so far been issued to a vessel, pending resolution of the basic application for CPC, an application for amendment of route or rerouting may be filed and considered by the MARINA, but the amended authority to be issued as a result thereof, shall be subject to the one (1) year maximum period per issuance to be cumulatively


reckoned from the first PA issued in the original application.

2. All government departments, offices, agencies, or instrumentalities, including government-owned or controlled corporations, such as the Board of Investments, Bureau of Customs, Bureau of Fisheries and Aquatic Resources, Bureau of Plant Industry, Bureau of Animal Industry, National Quarantine Office, Philippine Navy, and the Philippine National Police, are hereby ordered to assist and coordinate with MARINA in the implementation of this Executive Order.
3. This Executive Order revokes or amends all executive, department and other agency issuances or any provision thereof inconsistent with this Executive Order. The MARINA is hereby directed to issue rules and regulations to implement this Executive Order.
4. This Executive Order shall take effect fifteen (15) days after its publication once in a newspaper of general circulation.

DONE in the City of Manila, this 28th day of June in the year of Our Lord, Nineteen Hundred and Ninety-Four.

By the President:




TEOFISTO T. GUIGONA, JR.
Executive Secretary

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