

## ***PCC Policy Advisory on Executive Order 909 and MARINA Circular 2015-04 on the Granting of Pioneer Status in the Domestic Shipping Industry***

1. The main objective of the Maritime Industry Authority (MARINA) in implementing Executive Order No. 909 (EO 909) and MARINA Memorandum Circular No. 2015-04 (MC 2015-04) is to address the long-standing issue of poor service quality and safety record of the Philippine domestic shipping industry. EO 909 and MC 2015-04 are expected to result in improved overall quality of water transport in the country through modernization of domestic fleet.
2. The Philippine Competition Commission (PCC) supports MARINA in its efforts to improve market conditions in the maritime industry as outlined in the Maritime Industry Development Plan 2019-2028 and highlights the importance of competition in policy-making and regulatory decisions. Rules and regulation designed to attain specific policy objectives also need to be examined under a competition perspective to ensure that market competition is not negatively affected as a result of government intervention.
3. In this regard, the PCC conducted a Competition Impact Assessment (CIA) study on EO 909 and MC 2015-04.<sup>1</sup> The PCC submits this policy advisory to assist MARINA in reviewing the grant of Pioneer Status in the domestic shipping industry, consistent with MARINA's objective of ensuring high quality of service in the industry.
4. The PCC is of the view that the review and reform of the regulation should also include steps that would improve the competition environment in order to address long-time industry problems and enhance market performance. In revisiting the implementation of EO 909 and MC 2015-04, the PCC's recommendations are centered on key competition principles discussed below.

### ***A. Encourage entry and expansion and facilitate competition among market players***

5. Removing regulatory barriers to entry will encourage entry of new market players and expansion of operations of incumbent players, thereby introducing the competitive pressure needed to lower shipping rates and improve quality of service. MARINA may consider the following recommendations to ensure that the number of players is not restricted, and entry and expansion activities are encouraged:
  - a. *Review incentives that grant exclusive rights to Pioneer Status grantees.* Protection of investment that provides a six-year moratorium on deployment of vessels serves as an absolute barrier to entry to potential market players in Pioneer Status routes. While it has not yet been determined whether a six-year moratorium is enough to recover the investments of Pioneer Status operators, the outright restriction has an immediate effect on distorting the market. In this regard, MARINA may wish to evaluate the necessity of the incentive, bearing in mind that the grant of exclusive rights is often only justifiable for natural monopolies. MARINA may choose to consider

<sup>1</sup> Competition Impact Assessment (CIA) studies are conducted by PCC to evaluate the impact of rules and regulations on competition in markets. The studies are designed to provide insights on how markets function and provide policymakers with additional tools for crafting regulations. The CIA on Pioneer Status was concluded last February 2019.

other incentives to encourage investments in newer and higher quality vessels without introducing market distortions.

- b. *Review participation of Pioneer Status holders in entry decision.* Giving Pioneer Status holders priority to add vessels or schedules in a route where there is a need for additional bottoms impedes entry and expansion activities of incumbent players, and consequently limits the range of services available to consumers.
- c. *Review requirements that increase cost of entry and expansion.* Incumbent players who wish to expand operations in Pioneer Status routes are also required to invest in brand new IACS-classed vessels, but without the same benefit as Pioneer Status grantees. This makes expansion activities more costly for incumbent and even new players.

**B. Enhance competitiveness of market players and create a level playing field**

6. Ensuring fair competition among all market participants will lead to improved market efficiency and will decrease the likelihood of market players engaging in anticompetitive business practices. MARINA may consider the following recommendations to ensure that existing policies do not render undue advantage to some operators and a level playing field is preserved:
  - a. *Review of requirements that set unduly high standards.* It is unclear whether the stringent standards set by IACS classification societies are applicable and necessary for vessels licensed to ply domestic waters only. As such, MARINA may reevaluate the quality standards set by EO 909 and MC 2015-04 and determine whether there are other measures to guarantee quality and safety. MARINA may choose to focus regulation on other aspects of domestic shipping operations that are also in line with service quality, such as vessel repair and maintenance.
  - b. *Review provision on special berthing facility.* The provision of a special berthing facility for Pioneer Status grantees physically restricts non-Pioneer Status competitors from accessing a common docking space, making it more difficult for the latter to compete with Pioneer Status grantees in the same route. MARINA, together with the Philippine Ports Authority (PPA) and other port authorities, may reassess whether the incentive disrupts and restricts operations of competitors more than it benefits Pioneer Status grantees.
7. In reviewing and proposing amendments to the policy on granting Pioneer Status, there is a need to carefully weigh the benefits of accomplishing industry objectives against costs associated with potential market distortions. Alternative rules and regulations that will accomplish similar objectives with the least detrimental effect on competitive conditions should be considered. Thus, the PCC respectfully recommends that EO 909 and MC 2015-04 be revisited and amended in order to ensure that these regulations are in line with competition policy objectives espoused under the Philippine Competition Act. It is further recommended that a Technical Working Group comprising of MARINA, PPA and other port authorities, and the PCC be created to review EO 909 and MC 2015-04.
8. Pursuant to its mandate to protect and promote competition in the market, the PCC is very much willing to take part in further discussions as regards implementation of EO 909 and MC 2015-04. Fostering a competitive environment will ensure that industry players will provide better quality of service at the least possible cost, to the ultimate benefit of Filipino consumers.