OF 2024 – 1 – Final Determination

Proposed Dispute Resolution Regulations

UTILITY REGULATION AND COMPETITION OFFICE
THE CAYMAN ISLANDS

Publication Date: 1 May 2024

Contents

1. Background

1. The Utility Regulation and Competition Office ('OfReg' or the 'Office') is the independent regulator established by section 4 of the Utility Regulation and Competition Act (2024 Revision) (the 'URC Act') for the electricity, fuels, information and communications technology, water, and wastewater sectors in the Cayman Islands. The Office also regulates the use of electromagnetic spectrum and manages the .ky Internet domain.

2. Under its enabling legislation, the Office has several functions. In performing its functions and exercising its powers under the URC Act or any other legislation, the Office may resolve disputes between sectoral providers, and between sectoral providers and sectoral participants.

3. On 4 March 2020, the Office published its consultation entitled "OF 2020 – 1 – Consultation on Proposed Dispute Resolution Regulations".[1]

4. The Office published an Extension Notice[2] extending the closing date for submissions from 3 April 2020 to 1 May 2020 due to the COVID-19 pandemic.

5. As of 1 May 2020, the Office received four submissions in response to the OF 2020 – 1 - Consultation.[3]

6. The Office holds the position that there needs to be clarity in relation to the dispute resolution process for disputes between sectoral providers, that are presented to the Office for a decision. The Office wants to ensure that there is a distinct process in place, that includes a certain degree of flexibility.

7. Upon the publication of the Office's final determination, the Office will submit a recommendation to Cabinet requesting that the Final Draft Dispute

[1] https://www.ofreg.ky/upimages/commonfiles/158533163815833098912020030 3OF2020-1-ConsultationonProposedDisputeResolutionRegulations.pdf

[2] https://www.ofreg.ky/upimages/commonfiles/158533184020200326ExtensionNotice-ConsultationonDisputeResolutionRegs.pdf

[3] https://www.ofreg.ky/upimages/commonfiles/1589781575ResponsetoProposedDisputeResolutionRegulations.pdf

Resolution Regulations ("the Recommended Regulations") be professionally drafted and made into legislation.

2. Legal Framework

8. The following provisions are of particular relevance.

9. Sub-section 6(2)(cc) of the URC Act states that the Office, in performing its functions and exercising its powers under the URC Act or any other legislation, may "resolve disputes between sectoral providers, and between sectoral providers and sectoral participants."

10. In addition, sub-section 6(2)(q) of the URC Act states that the Office may "initiate and conduct inquiries and investigations into any matter or complaint, either on its own initiative or referred to it, which in the opinion of the Office, is not frivolous."

11. Sub-section 61(1) of the URC Act states that the Office "may, as soon as reasonably practicable after this section comes into force, establish one or more alternative dispute resolution schemes for disputes between licensees and between licensees and consumers or approve a scheme proposed by licensees under sub-section 61(4) ". Sub-section 111(1)(b) of the same Act provides that the Cabinet "may make regulations for the better carrying out of the Act and giving effect thereto and in particular for any purpose for which regulations are authorised or required to be made under this Act and for prescribing anything that by this Act is required or authorised to be prescribed by regulations."

12. It is the position of the Office that it retains the right to propose amendments to the Final Proposed Regulations when appropriate but not so frequent so as to render the dispute resolution process arbitrary, but in any event only after consultation.

3. OF 2020 – 1 – Consultation

13. In **OF 2020 – 1 – Consultation**, the Office conducted a public consultation on the Recommended Regulations that outline the dispute resolution process that the Office expects sectoral providers, sectoral participants and interested parties to follow in relation to non-consumer related disputes.

14. The Recommended Regulations addressed the process in relation to how to prepare and submit a request to the Office for a decision on a non-consumer related dispute. In addition, the Recommended Regulations outlined the requirements in relation to the submission of confidential documentation, the circumstances in which the Office may decline to entertain a decision request as well as how hearings would be conducted. The costs for submitting a decision request were also stated in the Recommended Regulations.

15. The Recommended Regulations were influenced by the former Information and Communications Technology Authority's ("ICTA") Dispute Resolution Regulations 2003, which will be repealed if the Recommended Regulations are made by the Cabinet and become legislation. The Office holds the position that it is necessary to repeal the former ICTA's Dispute Resolution Regulations, as the Recommended Regulations will be applicable to all providers and participants across all sectors regulated by the Office.

16. The Recommended Regulations consisted of eighteen (18) Regulations which address the administrative process regarding the Office's proposed dispute resolution process as well as the following:

- Dispute referrals
- Ruling Requests
- Preparation of Rulings
- Hearings
- Withdrawal of disputes
- Use of experts
- Costs
- Effect of Rulings

17. In the Consultation, the Office posed four specific questions regarding the Recommended Regulations.

4. Comments Received and Office Responses

18. The Office received four responses to OF 2020 – 1 – Consultation, from Cayman Water Company ("CWC"), Clean Gas Ltd. ("Clean Gas"), Infinity Broadband Ltd. ("C3") and Digicel (Cayman) Ltd. ("Digicel"). The Office has reviewed all comments received and its responses are set out below each comment.

4.1 CWC

A) Question 1

Do you agree that the draft Dispute Resolution Regulations clearly outline the office's proposed dispute resolution process in relation to non-consumer related disputes?

19. CWC holds the view that there are significant drafting issues and that the scope of the Regulations should also cover the dispute resolution process in relation to OfReg decisions. CWC also submitted a table with comments.

Office Response

20. The Office disagrees that there are significant drafting issues, but recognises that Legislative Drafting Department will add polish. However, the Office agreed with suggestion regarding sub-regulation 6(2)(cc). The Office amended the Recommended Regulations to reflect appeals process.

21. The Office addresses CWC's table of comments in paragraph 27.

B) Question 2

In your opinion, do you think that the reasons why the Office would decline to deal with a decision request are clearly outlined in the proposed Dispute Resolution Regulations?

22. CWC stated that "the grounds for declining to deal with a decision request set out in Regulation 9(i) and (l) given unduly wide discretion to OfReg. It is not normally the function of a Regulator to determine what is in the best interests of the Islands."

Office Response

23. The Office disagrees with CWC's submission and holds the position that as a quasi-judicial entity, it has the power to decline decision request within reason. In addition, the Office believes that due to its particular statutory functions and powers, that is does assist in formulating what is in the best

interest of the Islands especially as it relates the protection of critical national infrastructure as defined in the URC Act and sectoral legislation.

C) Question 3

In your opinion, do you think that the amount of the proposed fees is appropriate?

24. CWC responded that "the Notice of Consultation does not explain how OfReg determined that the proposed non-refundable processing fees are reasonable but has simply doubled the processing fee set out in the Information Communications and Technology Authority Dispute Resolutions Regulations for "corporations" (which is not defined), and by 3.5 times for individuals. Taking into account that the Recommended Regulations separately provide for awards of costs for "any and all of the costs of the Office" we consider that an appropriate reference point for a non-refundable processing fee is the filing fee for originating process in the Civil Division of the Grand Court, i.e., CI $200."

Office Response

25. The Office notes CWC's response and reduced the processing fee to CI $750. However, the Office disagrees with the proposed filing fee of CI $200, as that would not be sufficient to cover the expenses of the Office. The Office estimates that its cost to commence the processing of grievances and ruling requests from sectoral providers range from KYD $1500 to KYD $3000, depending on the time required to guide and communicate with the parties as well as review relevant documentation. Therefore, the Office concluded that the processed fee should be increased from $750, which it has been since the existence of the former Information Communications and Technology authority, to $1500.

D) Question 4

Please provide your views on any other matters you consider relevant to this Consultation.

26. CWC referred to the table with its' comments.

Office Response

27. The Office noted CWC's comments. Please see below the Office's responses to each comment:

CAYMAN WATER COMPANY LIMITED COMMENTS ON THE DRAFT UTILITY REGULATION AND COMPETITION OFFICE (DISPUTE RESOLUTION) REGULATIONS		Office's Responses
The Preamble	This states that the Regulations are made by Cabinet in accordance with section 111(1)(b) of the Utility Regulation and Competition Law ("URCL"). However, section 111(1)(b) simply gives a general power to make regulations and so the reference does not make clear which particular statutory power is being exercised. It should there also cite section 6(2)(cc) of the URCL. We consider that the Regulations should be broad enough to encompass the following: (a) appeals from customers of sectoral providers under section 59 of the URCL; (b) Alternative Dispute Resolution Schemes under section 61 of the URCL so the aggrieved persons are provided with an alternative. Regulation 7 does refer to	The Office noted CWC's comments, and also included the Cabinet's specific power in sub-sections 61(1) and 111(1)(b) of the URC Act to make this type of regulations. However, the Office disagrees with CWC's suggestion in relation to the appeals from customers of sectoral providers under section 59 of the URC Act. The Office developed the Customer Complaints Appeals Procedure Guidelines in order to address consumer complaints submitted to the Office.

	appointment of mediators and acting as adjudicator but we do not consider this sufficient as a scheme; and (c) fair and speedy dispute resolution procedures for decisions of OfReg as an alternative to judicial review as provided for in paragraph 5(7) of the General Regulatory Principles (which are set out in the Schedule to the Water Sector Regulation Law) which states as follows: "The decisions of the Office shall apply the principles of administrative decision-makers, such as legality, adherence to the principles of due process and natural justice, fairness, proportionality and nationality; and such decisions shall be the subject of fair and speedy dispute resolution procedures."	
Regulation 2 (Definitions)	We consider that the definition of "dispute" is circular and unhelpful. This should be used to define the scope of the disputes, and who are properly parties to disputes, that are subject of a decision request. For example, "…means any dispute or difference of	The Office noted the comment in relation to the definition "dispute", and modified the definition of dispute. In addition, the Office also corrected the reference in the definition of "decision request", which will now be known as a "ruling request".

	whatsoever nature between sectoral providers or between sectoral providers and interested parties." The definition of "decision request" should refer to regulation 4 versus 5. We consider that a standard form should be developed for this purpose and attached in a Schedule to these regulations. We consider that "Interested party" has an odd definition. It should actually define what an interested party is, e.g. "any person who has sufficient interest or is likely to be affected by any matter which is the subject of a notice of grievance." It is not clear why simply being a "cooperation" makes one an interested party. "Sectoral participant" which is defined in the URCL as a person who provides, uses or seeks to use utility services in a sectoral utility, but does not include the Office could be interpreted to include consumers which the Consultation document states it Is not intended to include. The definition of "respondent" refers to a "notice of dispute" while	The Office removed the defined term "interested party" throughout all of the Recommended Regulations. A standard form shall not be created at this time, as the Office recognises the need for flexibility. The Office also made additional amendments to ensure consistency in terminology.

	regulation 3 refers to a "notice of grievance". There should be consistency in terminology. The form of this notice should also be developed and attached in a Schedule to the Regulations.	
Regulation 3(3)	We consider the words "should continue to be governed by" should be deleted and replaced by "is".	The Office disagreed with this suggested amendment, and did not amend the regulation as suggested.
Regulation 3(4)	We consider this should read "…any of the complainant (vs. of the aggrieved) or the respondent may submit a decision request to the Office" to achieve consistency of terminology.	The Office agreed with this suggested amendment. In addition, the Regulations were amended to replace the term "Licensees" with the defined term "authorisation holder" throughout the regulations. The Office holds the view that "authorisation holder" is more appropriate due to its broader definition in the URC Act.
Regulation 5	This assumes that the referring party will not be the respondent, but under Regulation 3(4) it may be.	The Office notes this comment, and sub-regulation 3(4) was removed from the Recommended Regulations.
Regulation 9(b)	This should refer to "the Law" which is defined as the URCL.	The Office noted this comment and amended the Regulations accordingly. The

		amended regulation is ls now labelled as regulation 8(b)).
Regulation 9(j)	We consider the words "should continue to be governed by" should be replaced by "is".	The Office noted and agreed with this suggestion, and made the amendment accordingly.
Regulation 15(2)(c)	This should read "any or all costs or any respondent."	The Office noted this comment and disagreed with the suggested change.
Regulation 17(2)	If rulings are not administrative decisions as per the definition of "ruling" then it follows that they are not subject to the duty to consult under section 7 of the URCL so this provision is redundant. It should read "Rulings…are not subject to the Office's duty to consult…". Note that the definition of "administrative determinations" in the URCL – "includes any order, regulation, direction, decision, or other writer determination by which the Office establishes the legal rights and obligations of one or more sectoral participants, but does not include an advisory guidelines", so, strictly speaking, would include a ruling on a dispute since under	The Office noted and agreed with this comment, and made the suggested amendment accordingly.

	Regulation 17 it is binding on the parties.	

4.2 Clean Gas

A) Question 1

Do you agree that the draft Dispute Resolution Regulations clearly outline the office's proposed dispute resolution process in relation to non-consumer related disputes?

28. Summary of introduction: Clean Gas would welcome the following amendments to the draft Dispute Resolution Regulations (the "proposed regulations"):
• Imposition of a robust timetable for dispute resolutions, with defined phases and obligations placed upon both providers and the Office;
• Transparency obligations relating to the process and progress of disputes;
• Penalties or cost implications for providers who act unlawfully or in breach of the relevant regulatory requirements, who fail to respond to information requests in a timely or complete fashion, or who otherwise delay the determination of disputes;
• Removal of thresholds of impacts on competition, society or the economy in Section 9 (reasons for rejection);
• Imposition of a robust timetable for any investigations resulting from decision requests;
• Consideration of imposition of interest payment by providers who have taken payment for work that remains outstanding during the course of a dispute;
• Consideration of how fees should be treated in circumstances where determinations are significantly delayed.

29. 1. Imposition of a timeline for Disputes - Proposed regulations do not address the failure of the current regulations to impose a defined timeline for disputes. It is vital for disputes to be resolved in an expeditious way and for the proposed regulations to clearly outline a timeline for disputes that includes express targets for responses by the Office as well as the providers. Clean Gas notes that other jurisdictions impose clear timelines for dispute resolution. For example, Ofgem has a statutory duty to reach a determination within 2 months and to the extent practical, "as soon in that period as practicable" before the 4-month deadline. Clean Gas requests

that the Office takes this opportunity to put in place a robust and transparent dispute resolution regime, including: (i) a clear timetable; (ii) requirements for transparency; and (iii) penalties (or cost implications) for parties who fail to comply with Office requests or who otherwise cause delay to the dispute resolution process. Clean Gas proposes "Phase 1: initial inquiry - initial determination of request and whether decision request should be declined under section 9 - confirmation of either rejection or formal proceedings being opened. Decisions should be provided and the decision subject to judicial review - within 30 days of the decision request. Phase 2: Formal proceedings - to include where relevant: requests for information from any person as may be affected; hearing; mediation - within 90 days of the opening of formal proceedings (and to the extent practical, "as soon in that period as practicable" within that period). Phase 3: Determination - publication of determination, subject to judicial review - within 14 days of the conclusion of Phase 2." 2. Imposition of regulatory penalties - The Office should include express provision for penalties for the following: unlawful acts or breaches of regulatory requirements; failure to provide information requested during the course of a dispute resolution process of investigation; any act or omission leading to delay to the dispute resolution process or investigation. In the UK, the central objective of imposing a penalty is deterrence. Clean Gas is in no doubt that if the Office imposed penalties for both breaches of the regulations and failure to assist the Office in its processes and investigations, providers would be deterred from anti-competitive behaviour and behaviour that impedes dispute resolution processes being concluded.

Office Response

30. The Office notes Clean Gas' comments. The Office agrees that there should be a timetable for dispute resolutions, with defined phases and obligations placed upon both providers and the Office. Hence, the creation of the Recommended Regulations. The Recommended Regulations do outline the obligations on the Office and the parties involved in a dispute resolution process. In addition, the URC Act also outlines the Office's powers regarding the issuing of penalties for providers who act unlawfully or in breach of the relevant regulatory requirements, who fail to respond to information requests in a timely or complete fashion, or who otherwise delay the determination of disputes. Lastly, the Recommended Regulations have been amended to include a regulation to address penalties in relation to the contravention and/or failure to comply with the regulations.

31. The Office agreed with Clean Gas' suggestion in relation to the removal of "the ruling is unlikely to significantly advance competition in the market " as a reason for rejection under regulation 9 of the Recommended Regulations. Please note that the Office has considered Clean Gas' comments regarding the implementation of a timeline for any investigations resulting from ruling requests. However, the Office holds the position that implementing a specific timeline would be difficult as it depends on the subject matter of the investigation, and the availability of internal and/or external resources.

32. After considering Clean Gas' suggestion in relation to the "imposition of an interest payment by providers who have taken payment for work that remains outstanding during the course of a dispute", the Office does not agree with this suggestion, and holds the position that issuing penalties will suffice.

33. Lastly, the Office holds the position that if a determination is significantly delayed, the Office will assess and take into account the reasons (regardless of whether it's the fault of the Office or the fault of the parties) as well as the potential or actual negative effects as a result of the delay when making its decision.

B) Question 2

In your opinion, do you think that the reasons why the Office would decline to deal with a decision request are clearly outlined in the proposed Dispute Resolution Regulations?

34. Clean Gas responded that it has the following concerns with the reasons for declining a decision request as outlined in Section 9:
• In relation to Section 9(e), Clean Gas agrees that parties should make reasonable efforts to settle the dispute between them. However, Clean Gas notes that compliance with Section 3 should amount to "reasonable efforts to settle" and, therefore, if the referring party has complied with the provisions of Section 3, the decision request should not be declined under Section 9(e). Clean Gas is additionally concerned that the step in Section 3 simply delays the process further and would suggest that the process is limited to one meeting (within five days of notification of intention) in order to progress the matter as swiftly as possible.
• Clean Gas has concerns around the threshold in Section 9(g) that a ruling must "significantly advance competition" for a determination request to be

accepted. In and of itself, the behaviour complained of in a decision request or its resolution may not have significant effect on competition generally. However, this does not mean it does not require resolution:
- the Office's determination that the behaviour is anti-competitive may deter the respondent provider (and others in the market) from further anti-competitive behaviour in the future;
- this ignores the cumulative effect of multiple infractions by other providers - some minor, some major. Imposing a threshold of this nature will allow infractions to continue, with incumbent providers encouraged to weigh up their actions by reference to that threshold;
- any infraction of the laws and regulations of the Cayman Islands should be regulated and policed, without a threshold as to size; and
- persons affected by such infractions should not be discouraged from bringing complaints (notably, upon payment of a non-refundable fee) by such a threshold being imposed.
Similarly, Clean Gas considers in relation to Section 9(i), that where the behaviour complained of is anti-competitive, it should never be the case that such behaviour is considered by the Office to be "not consequences, than it is to comply with the law in the first instance, and that it should therefore discourage bad conduct and encourage good practices and a culture of compliance across the organisation".
• of "significant social or economic importance". By definition, anti-competitive behaviour, however small, is of social and economic importance. Each incident may only be considered to impact one fuel provider, but cumulatively such behaviour results in significant detriment to consumers and the market generally.
• In relation to Section 9(h), Clean Gas welcomes the Office's commitment to commence investigations into the market where the subject matter of the decision request is repetitive in that market, but considers that it is necessary, in such circumstances, to provide for a timetable for the commencement and conclusion of such investigation. Clean Gas has suggested above that the timetable for investigation should mirror that proposed for dispute resolution (i.e. 90 days from the decision to open the investigation).

Office Response

35. The Office holds the position that although a party may make a reasonable effort to settle in compliance with regulation 3, there are still circumstances in which the Office reserves the right to decline a request to resolve a dispute. The Office list these circumstances in regulation 9. The Office,

after reviewing the submission made by Clean Gas has decided to remove sub-regulations 9(g) and 9(i) which provided that "the ruling is unlikely to significantly advance competition in the market " and "the subject matter of the decision request is not of significant social or economic importance" as reasons for declining requests respectively.

C) Question 3

In your opinion, do you think that the amount of the proposed fees is appropriate?

36. Clean Gas that it in its response that it notes that the level of fees has significantly increased from $750 for the submission of a determination request, to $1,500. If the increased fee arises from an enhanced focus upon fuel disputes, with further resources being employed, and will result in the guarantee of determinations being made expeditiously – and preferably in accordance with a timetable defined in the proposed regulations - then Clean Gas will necessarily, albeit reluctantly support the increase. However, in circumstances where there no timetable is imposed, if the result is that the Office is not required to make determinations within any timeframe (and as such that a determination may not be made), Clean Gas finds any increase (or any fee at all) to be a difficult proposition to support.

Office Response

37. The Office, after consideration of other submissions to the Consultation, have have determined that the proposed fee will be $1500 as outlined in paragraph 25.

D) Question 4

Please provide your views on any other matters you consider relevant to this Consultation.

38. 1. Emergency powers - Section 66 of Bermuda Regulatory Authority Act provides for an Emergency General Determination: "Authority may make a general determination on an emergency basis without complying with the public consultation procedures specified in this Act whenever the Authority concludes that the urgency of a particular case requires that it do so". Clean Gas submits that it would be appropriate for the Office to have an explicit right (and obligation) to make a determination outside of its standard

process and procedures in circumstances which are determined by the Office to be an emergency or where the determination is urgent. For example, it may be that a provider is unable to access a route at a time of emergency (pandemic, hurricane, etc.) and it becomes imperative that they are enabled to do so by immediate determination in order to ensure public safety or continuity of public service. 2. Regulatory resourcing – Clean Gas is concerned that the Office does not have sufficient resourcing to be able to deal with the regulatory burden placed on it of reviewing and determining disputes. Clean Gas considers that the Office should have a team of attorneys with subject matter experience from relevant jurisdictions in each of the utilities sectors the Office is responsible for. Without such expertise and resourcing, it is very difficult to see how any improvement to the regime can be effected, regardless of what is enshrined in the proposed regulations.

Office Response

39. The Office have considered Clean Gas' response. The Office agrees that the emergency powers of Bermuda's Regulator to make general determinations would be quite useful. Hence, the Office incorporated emergency powers in the final draft of the Regulations, and has addressed the production of rulings in response to urgent expedited requests in sub-regulation 4(2).

40. Clean Gas' statement in relation to regulatory resourcing is noted. The Office utilises independent consultants to assist when necessary. In addition, the Office plans to increase the compliment of the legal team in due course.

4.3 C3

A) Question 1

Do you agree that the draft Dispute Resolution Regulations clearly outline the office's proposed dispute resolution process in relation to non-consumer related disputes?

41. Summary of Introduction: C3 would welcome the following amendments to the draft Dispute Resolution Regulations (the "proposed regulations"):
• Imposition of a robust timetable for dispute resolutions, with defined phases and obligations placed upon both providers and the Office;
• Transparency obligations relating to the process and progress of disputes;
• Penalties or cost implications for providers who act unlawfully or in breach of the relevant regulatory requirements, who fail to respond to information requests in a timely or complete fashion, or who otherwise delay the determination of disputes;
• Removal of thresholds of impacts on competition, society or the economy in Section 9 (reasons for rejection);
• Imposition of a robust timetable for any investigations resulting from decision requests;
• Consideration of imposition of interest payment by providers who have taken payment for work that remains outstanding during the course of a dispute;
• Consideration of how fees should be treated in circumstances where determinations are significantly
delayed.

42. 1. Imposition of a timeline for Disputes - Proposed regulations do not address the failure of the current regulations to impose a defined timeline for disputes. It is vital for disputes to be resolved in an expeditious way and for the proposed regulations to clearly outline a timeline for disputes that includes express targets for responses by the Office as well as the providers. C3 notes that other jurisdictions impose clear timelines for dispute resolution. For example, Ofcom has a statutory duty to reach a determination within 4 months and to the extent practical, "as soon in that period as practicable" before the 4-month deadline. The Customer Appeal Procedure Guidelines provide some timeframes for decision making by the Office. C3 notes that the customer guidelines do impose a 15 day requirement upon the Office to provide a decision after it receives information from the parties, and therefore gives more clarity and structure to disputes than the proposed guidelines. C3 included an illustration of C3's ongoing disputes that were submitted to OfReg. The cost to C3 of having

such matters unresolved is significant. It is noted that the Office has the ability, under the proposed regulations, "to direct the parties to commence or continue reasonable efforts to resolve the dispute". C3 is concerned that this step simply delays the process further and would suggest that the process is limited to one meeting (within five days of notification of intention.) C3 notes that the Office has specific powers to initiate an investigation if there is a dispute regarding network access and the infrastructure sharing provisions. However, the framework does not provide a clear route for an ICT provider to trigger such an investigation. Under this route the Office is required to provide a timetable to the parties for determining the dispute, but in practice the Office seldom takes this approach, typically taking a more reactive approach to dispute between ICT providers. C3 set out a proposal for a timeframe for disputes, largely modelled on the UK framework. If an investigation is opened, C3 submits that it should be concluded within 90 days of the decision, with publication of the investigation. It should be noted that the detriment is not limited to financial and commercial impact on smaller providers such as C3. The delay in resolving disputes also inevitably leads to significant restrictions on competition within the industry, which has clear and very negative consequences for consumers and the Cayman Islands. 2. Imposition of regulatory penalties - The Office should include express provision for penalties for the following: unlawful acts or breaches of regulatory requirements; failure to provide information requested during the course of a dispute resolution process of investigation; any act or omission leading to delay to the dispute resolution process or investigation. C3 notes that Ofcom has powers to punish those who act unlawfully or in breach of the relevant regulatory requirements under section 392 Communications Act 2003 and has published penalty guidelines. C3 is in no doubt that if the Office imposed penalties for both breaches of the regulations and failure to assist the Office in its processes and investigations, providers would be deterred from anti-competitive behaviour and behaviour that impedes dispute resolution processes be concluded. As such, C3 would suggest that this is a vital requirement for inclusion in the regulations.

Office Response

43. C3's comments are noted, and refers C3 to paragraphs 30 to 33 where the Office previously addressed similarly comments submitted by Clean Gas.

B) Question 2

In your opinion, do you think that the reasons why the Office would decline to deal with a decision request are clearly outlined in the proposed Dispute Resolution Regulations?

44. In relation to Section 9(e), C3 agrees that parties should make reasonable efforts to settle the dispute between them. However, C3 notes that compliance with Section 3 should amount to "reasonable efforts to settle" and, therefore, if the referring party has complied with the provisions of Section 3, the decision request should not be declined under Section 9(e). C3 has noted its suggested amendments to Section 3 above, being a five-day window for one meeting between the parties, in order to progress the matter as swiftly as possible. C3 has concerns around the threshold in Section 9(g) that a ruling must "significantly advance competition" for a determination request to be accepted. In and of itself, the behaviour complained of in a decision request or its resolution may not have significant effect on competition generally. However, this does not mean it does not require resolution:
- the Office's determination that the behaviour is anti-competitive may deter the respondent provider (and others in the market) from further anti-competitive behaviour in the future;
- this ignores the cumulative effect of multiple infractions by other providers - some minor, some major. Imposing a threshold of this nature will allow infractions to continue, with incumbent providers encouraged to weigh up their actions by reference to that threshold;
- any infraction of the laws and regulations of the Cayman Islands should be regulated and policed, without a threshold as to size; and
- persons affected by such infractions should not be discouraged from bringing complaints (for a non-refundable fee) by such a threshold being imposed. Similarly, C3 considers in relation to Section 9(i), that where the behaviour complained of is anti-competitive, it should never be the case that such behaviour is considered by the Office to be "not of "significant social or economic importance". By definition, anti-competitive behaviour, however small, is of social and economic importance. Each incident may only be considered to impact one ITC provider, but cumulatively such behaviour results in significant detriment to consumers and the market generally. It is noted in this respect that the UK regulator, Ofcom, takes into account the "degree of harm caused by the contravention" when considering what, if any, penalty should be applied to a provider which has behaved unlawfully or in contravention of regulatory requirements. Ofcom

clearly notes, however, that "the level of the penalty … as explained above, is to ensure that the management of the regulated body is incentivised to modify the behaviour of that body (and deter other regulated bodies accordingly). Any quantified harm/gain is only one of the factors in determining the appropriate and proportionate level of the penalty". As such, Ofcom's policy implicitly acknowledges that the very fact of a breach of competition regulation is the relevant point (and may result in penalty) regardless of the impact of such breach. In relation to Section 9(h), C3 welcomes the Office's commitment to commence investigations into the market where the subject matter of the decision request is repetitive in that market, but considers that it is necessary, in such circumstances, to provide for a timetable for the commencement and conclusion of such investigation. C3 has proposed a timeframe for investigations above.

Office Response

45. The Office notes C3's response, and refers C3 to paragraph 35 where the Office previously addressed similarly comments submitted by Clean Gas.

C) Question 3

In your opinion, do you think that the amount of the proposed fees is appropriate?

46. C3 notes that the level of fees has significantly increased from $750 for the submission of a determination request, to $1,500. C3 notes that it has a concern with any fee being payable in circumstances where a determination is never reached. Table 1 sets out the fees that have been paid by C3 to the Office since 2014, in respect of which no determinations have been made to date. These fees total KYD$4,300. If the increased fee arises from an enhanced focus upon ITC disputes, with further resources being employed, and will result in the guarantee of determinations being made expeditiously – and preferably in accordance with a timetable defined in the proposed regulations - then C3 will necessarily, albeit reluctantly, support an increase. However, in circumstances where there no timetable is imposed and the Office is not required to make determinations in perpetuity, C3 finds any increase (and any fee at all) to be a difficult proposition to support.

Office Response

47. The Office notes C3's response, and refers C3 to paragraph 25 of this determination.

D) Question 4

Please provide your views on any other matters you consider relevant to this Consultation.

48. 1. Emergency powers - Section 66 of Bermuda Regulatory Authority Act provides for an Emergency General Determination: "Authority may make a general determination on an emergency basis without complying with the public consultation procedures specified in this Act whenever the Authority concludes that the urgency of a particular case requires that it do so". C3 submits that it would be appropriate for the Office to have an explicit right (and obligation) to make a determination outside of its standard process and procedures in circumstances which are determined by the Office to be an emergency or where the determination is urgent. For example, it may be that a provider is unable to access a route at a time of emergency (pandemic, hurricane, etc.) and it becomes imperative that they are enabled to do so by immediate determination in order to ensure public safety or continuity of public service. 2. Regulatory resourcing - C3 is concerned that the Office does not have sufficient resourcing to be able to deal with the regulatory burden placed on it of reviewing and determining disputes. C3 considers that the Office should have a team of attorneys with subject matter experience from relevant jurisdictions in each of the utilities sectors the Office is responsible for. Without such expertise and resourcing, it is very difficult to see how any improvement to the regime can be affected, regardless of what is enshrined in the proposed regulations.

Office Response

49. The Office notes C3's comments regarding emergency powers and refers C3 to paragraphs 39 and 40 of this determination where the Office previously addressed similarly comments submitted by Clean Gas.

4.4. Digicel

50. In its preliminary comments before addressing the consultation questions, Digicel notes that the draft regulations would only apply to local, licensed service providers. Digicel states that local providers face competition from unregulated overseas, on-line providers, and urges the Office to take into account the competitive disadvantage arising from the cost of additional regulatory obligations when considering the proportionality of any new proposed obligations.

Office Response

51. The Office notes that it considered both the impact of the Recommended Regulations on service providers and the benefits accruing to consumers when considering the proportionality of the Recommended Regulations. While the Recommended Regulations apply only to ICT service providers licensed by the Office,[4] the Office considers this to be reasonable as only licensed ICT service providers are authorised to provide services in the Cayman Islands, and only licensed ICT network providers are authorised to provide ICT networks in the Cayman Islands or to use spectrum allocated by the Office.

52. Whether "*unregulated overseas, online platforms*" compete with licensed ICT service providers, as stated by Digicel, is a question of fact. If this became an issue, it would be determined by the Office following a public consultation process. However, the Office considers that licensed ICT service providers would have a competitive advantage over such platforms if local providers provide their ICT services in accordance with the standards reasonably expected of competent providers of ICT services, which is the aim of the Recommended Regulations.

[4] See the definition of "*service provider*" in draft Regulation 2.

A) Question 1

Do you agree that the draft Dispute Resolution Regulations clearly outline the office's proposed dispute resolution process in relation to non-consumer related disputes?

53. Digicel believes that the proposals conflate two separate processes. The first is the direct determination of a dispute by the Office and the second is the use of Alternative Dispute Resolution (ADR) procedures to resolve disputes. The first process is contemplated under 6(2)(cc) of the Utility Regulation and Competition Law (the "Law"). This provides that "In performing its functions and exercising its powers under this or any other Law, the Office may…resolve disputes between sectoral providers, and between sectoral providers and sectoral participants;" In Digicel's view this provides for the Office to directly resolve disputes. The procedure for the Office to determine disputes should be set out in a sequential manner. Digicel notes that the EU regulatory framework sets out a defined end to end timeline for the determination of regulatory disputes. Digicel also notes that where the draft regulations specify timelines they in general apply to the activities of complainants or respondents. They do not in general provide even indicative timelines for the activities which are carried out by the Office. This imbalance undermines the value of having recourse to the Office as there is no certainty as to how quickly matters might be resolved. While there may be a view that it is impossible to set timelines given the range of possible disputes this same logic could be applied to the activities ascribed to the parties to the dispute. If it is possible to specify timescales for their activities then it should be possible for the Office to similarly set out the duration of its parts of the dispute resolution process. This second process relating to Alternative Dispute Resolution is provided for under Part 10 of the Law. This appears to contemplate a separate and distinct process to the main dispute resolution mechanism provided for under Section 6(2)(cc). It is not clear to Digicel that the Office has powers to force either a complainant or respondent to adopt such alternative procedures. Even if the Office does have such powers, then the provisions relating to costs and those relating to the withdrawal of a request for determination being conditional on payment of costs mean that complainants and respondents require significantly more clarity on costs before the 4 ADR process commences. Therefore a step is required which allows for the parties to review and consider any proposed referral to ADR.

Office Response

54. Digicel's comments are noted. The Office has inserted timelines in the Recommended Regulations that the Office has to adhere to in relation to its dispute resolution process. If the Cabinet makes the decision to accept the Office's recommendation and make the Recommended Regulations into law, the Office plans to prepare guidelines that should be read in tandem with the regulations and will address the timelines. However, the Office's goal is to issue rulings regarding disputes that are accepted by the Office within 4 – 6 months from the date of the acceptance.

B) Question 2

In your opinion, do you think that the reasons why the Office would decline to deal with a decision request are clearly outlined in the proposed Dispute Resolution Regulations?

55. Digicel is of the view that scope of what constitutes a dispute for the purposes of this Regulation is too wide. In particular Digicel is of the view that the disputes which are amenable to this Regulation should be confined to matters over which the Office has vires to make binding determinations absent a dispute. To do otherwise would extend the powers the Office beyond what is set out in the governing legislation simply because an issue has been formulated as a dispute. Similarly it is Digicel's view that the wording of Section 3 is also too wide in scope. The proposed Regulation 3(1) currently states that grievances amenable to requesting a dispute determination can relate to " any matter relating to another licensee". The scope of Regulatory disputes should be firmly anchored in the obligations of licensees. Any request for a determination should set out the specific regulatory obligation which the complainant asserts that the respondent has failed to meet. Provided that the scope for regulatory disputes is defined in the manner set out above then the proposed grounds for declining to accept a dispute are adequately set out in Regulation 9 of the Draft procedures.

Office Response

56. The Office noted Digicel's comments, and changed the definition of dispute so that it is narrowed to complaints or disagreements that exists on a matter pertaining to the markets and sectors for which the Office has responsibility.

C) Question 3

In your opinion, do you think that the amount of the proposed fees is appropriate?

57. Digicel does not believe that the level of the fees are appropriate. From time to time there are varying levels of application of Office resources to different players based on the conditions in that market at that time. The Office is funded by contributions from sectoral participants. The contribution does not vary according to the application of resources. Digicel believes that as a core function of the Office the cost of determining of disputes should be drawn from the overall budget of the Office.

Office Response

58. The Office considered Digicel's submission, and disagrees with the Digicel's proposal. Section 6(2) of the URC Act provides that the Office *may* "*resolve disputes between sectoral providers, and between sectoral providers and sectoral participants*". The Office holds the position that Licensees have several options in relation to the resolution of disputes. If a Licensee decides to request that the Office resolves the dispute and the Office decides to proceed, the Office would have to divert resources and time from the management and performance of its core functions. Therefore, the Office charges an administrative fee in order to cover the preliminary costs of addressing and resolving a dispute.

D) Question 4

Please provide your views on any other matters you consider relevant to this Consultation.

59. Digicel stated that the timelines in the draft regulations should all reference business days. The timeframe provided to a licensee to respond to a notice of grievance under regulation 3(2) is currently set at five business days. Five days to respond to a notice of grievance is not sufficient, especially as a notice is likely to contain significant details of the nature and circumstances relating the grievance and nature of action required. A responding licensee should therefore be given sufficient timeframe to review the nature of the grievance, to discuss the grievance internally with its management and relevant team members, to investigate the alleged claims, and then to put together a well set out response. Regulation 3(3) should be amended such

that an attempt to resolve the dispute should be made within 30 days following the date on which the aggrieved party receives a response, and not from the date the notice of grievance is received by a licensee. In essence, as currently written, this only gives the parties 24 or less days to attempt a resolution. Regulation 3(4) should be amended corresponding to the changes made to regulation 3(3) as set out above. Regulation 5(2) provides that the respondent must file a submission with 20 days after the decision request has been lodged. However this means that the respondent must commence drafting its response before it knows whether the Office will decline to accept the request for decision. To avoid this there should be a preliminary step where the Office determines the admissibility of the request and any response period should only commence once this decision has been advised to the respondent.

60. The essence of a dispute is that it is a matter between the directly affected parties. One party has a grievance with the other. This is reflected in the wording in Regulation 3 of the draft regulations. Digicel is strongly of the view that it is therefore inappropriate to allow submissions or participation from third or interested parties on the substance of the dispute. Such third parties have their own interests and the dispute is not between them and either the complainant or respondent. Digicel notes that scope of the Office's powers under Sections 6(2)(cc) is to "resolve disputes between sectoral providers, and between sectoral providers and sectoral participants". If they are not party to the dispute then unless it is to provide evidential material to support the facts of the matter then there should be no role for third parties in the process. Regulation 11 sets out that where it decides to hold a hearing then the default is that such hearing shall be held in public. Digicel disagrees strongly with this approach. Any hearing relates to a dispute between named parties and is for the purposes of facilitating the Office's resolution of the dispute. Digicel cannot identify any compelling reason to incur the additional cost and efforts of such hearings being in public. If the matter is determined solely on written submissions then these would not be made public throughout the conduct of the dispute process. There is no reason why oral submissions should be treated in any other manner. Digicel believes before any ruling is finalised a preliminary ruling should be made available to the parties to the dispute to afford them an opportunity to comment on the proposed ruling.

Office Response

61. The Office notes Digicel's comments, and made the changes to sub-regulations 3(3) and 5(2). Please note that sub-regulation 3(4) has been removed from the Recommended Regulations. In addition, the Office agrees with Digicel's point regarding allowing submissions from third or interested parties on the substance of a dispute, and the Recommended Regulations have been amended accordingly.

5. Determinations

62. Having considered all the submissions made by the respondents, the Office determines that it will recommend the Recommended Regulations as proposed in OF 2020 – 1– Consultation to the Cabinet, pursuant to sub-sections 61(1) and 111(1)(b) and (c) of the URC Act as well as for reasons set out above, with the following changes:

a. The word "Law" was replaced with the word "Act" throughout the regulations due to the Citation of Acts of Parliament Law, 2020 coming into force;

b. Regulation 2 - amended by inserting of the defined terms "authorisation holder", "ruling request" and "ruling". In addition, the defined term "dispute" will be amended by deleting "dispute or disagreement between sectoral providers and interested parties" and inserting "a complaint or a disagreement between authorisation holders that exists on a matter pertaining to the markets and sectors for which the Office has responsibility, and the parties acting in good faith have failed to reach an amicable resolution after all due efforts have been made to resolve it. For the purposes of these Regulations, a dispute does not include anti-competitive complaints" Lastly, the term "respondent" will be amended by inserting the wording "means any authorisation holder against whom another authorisation holder has a complaint or a dispute relating to a matter regulated under the Act."

c. Regulation 3 – the word "Licensee" is replaced with the defined term "authorisation holder"; the words "decision request" is replaced with the defined term "ruling request". The word "grievance" is replaced with the defined term "dispute". In sub-regulation (1), the words "and the Office simultaneously of the dispute via email correspondence or

by other appropriate means" were inserted after the words "inform that other authorisation holder". In sub-regulation (2), the words "it has received a written response to such notice it shall, in good faith" were inserted after the words "Where an authorisation holder has issued a notice of dispute, and". In sub-regulation 3(3), the words "via courier, email correspondence or certified mail services" was inserted after the word "Office";

d. Regulation 4 – The words "decision request" are replaced with the defined term "ruling request"; sub-regulation 4(a) was changed to the words "shall be in writing"; sub-regulation 4(b) was amended by replacing the word "respondent" with the word "parties; sub-regulation 4(d) was amended by inserting the word "already" after the word "have"; and sub-regulation 4(f)(ii) was amended by correcting the reference;

e. Regulation 5 – the words "decision request" is replaced with the defined term "ruling request". Regulation 5 is also amended by inserting a new sub-section 2 which states "*the Office, within three business days of receiving an expedited ruling request, will confirm whether it will accept or decline the ruling request*", and new sub-section 3 which states "*the Office, within five business days of receiving a ruling request that is not urgent, will confirm whether it will accept or decline the ruling request. If the Office accepts the urgent expedited ruling request, the Office will endeavour to prepare its preliminary ruling within five business days from the date the confirmation was sent to the parties, and will prepare its final ruling within five business dates from the date that the preliminary ruling is circulated to the parties. The deadline for the Office's production of its ruling will be dependent on staff availability, and the amount of evidence provided as well as the parties' responsiveness to the Office's request during the time period*" In addition, the modification of sub-section (2) which has been re-numbered sub-section (4) by inserting "*following the date that the Office has confirmed receipt and acceptance of the ruling request*" after the word "days". Lastly, sub-section (3) has been re-numbered as sub-section (5) and amended to reflect the new reference;

f. Regulation 7 - the words "decision request" is replaced with the defined term "ruling request", and the word "licensee" was replaced with the defined term "authorisation holder". In addition, the word

"mediation" was replaced with the word "adjudication" in sub-section (g);

g. Regulation 8 – the words "decision request" is replaced with the defined term "ruling request";

h. Regulation 9 - the words "decision request" is replaced with the defined term "dispute", and the word "licensee" was replaced with the defined term "authorisation holder". In addition, the word "mediation" was replaced with the word "adjudication" in sub-sections (b), (c), (d), (f), (g), (h), (i) and (k). A new sub-section (j), which provides that the Office can decline "it does not have sufficient resources to apply to the matter"';

i. Regulation 10 - the words "decision request" is replaced with the defined term "dispute";

j. Regulation 12 – the word "licensee" is replaced with the defined term "authorisation holder"; and the words "from interested parties" was deleted;

k. Regulation 13 - the words "decision request" is replaced with the defined term "ruling request. Regulation 13 was also amended by inserting the words "at any time" after "a referring party may", as well as inserting the words "by notice in writing to the Office and the respondent" after the words "withdraw a dispute";

l. Regulation 15 – in sub-regulation 15(2), the words "any referring party; or" and "any or all costs of any interested party or licensee" were deleted, and the words "the parties" was inserted after the words "any or all the costs of".

m. Regulation 16 – the word "final" was inserted before the word "rulings" and the words "via the Office's website" was inserted in sub-regulation 16(2);

n. Regulation 17 - the words "decision request" is replaced with the defined term "ruling request".

o. Regulation 18 – insertion of new regulation in order to address penalties as a result of a failure to comply and/or contravention of the regulations.

63. A copy of the final Recommended Regulations is attached as Annex 1 to this Determination.

64. The Office, in accordance with sub-sections 61(1) and 111(1) of the Act and, will make a recommendation to the Cabinet that the attached Recommended Regulations be made into legislation.

Annex 1
–
Final Proposed Dispute Resolution Regulations

Supplement No. [...] published with Gazette No [...] dated [...].

THE UTILITY REGULATION AND COMPETITION ACT (2024 REVISION)

THE UTILITY REGULATION AND COMPETITION OFFICE (DISPUTE RESOLUTION) REGULATIONS, 20[XX]

ARRANGEMENT OF REGULATIONS

CAYMAN ISLANDS

THE UTILITY REGULATION AND COMPETITION ACT (2024 REVISION)

PART 1 - PRELIMINARY

THE UTILITY REGULATION AND COMPETITION OFFICE (DISPUTE RESOLUTION) REGULATIONS, 20[XX]

The Cabinet, in accordance with sub-section section 61(1) and 111(1) of the Utility Regulation and Competition Act (2024 Revision) (as revised), makes the following regulations-

1. These Regulations may be cited as the Utility Regulation and Competition Office (Dispute Resolution) Regulations, 20[XX].

2. In these regulations -

"authorisation holder" has the same meaning as in the Act;

"dispute" means a complaint or a disagreement between authorisation holders that exists on a matter pertaining to the markets and sectors for which the Office has responsibility, and the parties acting in good faith have failed to reach an amicable resolution after all due efforts have been made to resolve it. For the purposes of these Regulations, a dispute does not include anti-competitive complaints;

"Act" means the Utility Regulation and Competition Act;

"Office" has the same meaning as in the Act;

"referring party" means an authorisation holder referring a dispute to the Office for a ruling; and

"respondent" means any authorisation holder against whom another authorisation holder has a complaint or a dispute relating to a matter regulated under the Act.

"ruling request" means a written and signed submission made to the Office by an authorisation holder or an interested party, and containing the information set out in regulation 4;

"ruling" is a decision made by the Office;

3. (1) An authorisation holder which is aggrieved by any matter relating to another authorisation holder may, by written notice, inform that other authorisation

holder and the Office simultaneously of the dispute via email correspondence or by other appropriate means and the notice shall specify –

(a) the nature and circumstances relating to the dispute; and
(b) the nature of any action which the complainant requires the other authorisation holder to perform or refrain from performing.

(2) Where an authorisation holder has issued a notice of dispute, and it has received a written response to such notice it shall, in good faith, use reasonable efforts to resolve such dispute within thirty (30) days following the date on which the Referring Party receives a response.

(3) Where any dispute as set out in paragraph (1) has not been resolved between all the relevant parties within a period of thirty (30) days following the receipt of the reply by the Respondent of dispute, the Referring Party may submit a ruling request to the Office via courier, email correspondence or certified mail services.

4. A ruling request –

(a) shall be in writing;
(b) shall include the identity and address of the parties;
(c) shall include the details of all relevant infrastructure or services, if applicable, to which the issues relate;
(d) shall set out the issues in dispute and any associated issues that have already been agreed by the parties;
(e) shall be accompanied by a written account which includes –
  (i) dates, and copies of any correspondence, setting out any efforts that have been taken by either the referring party or the respondent to settle the dispute;
  (ii) the matters which the referring party wishes the Office to determine; and
  (iii) a clear and concise statement of the relief sought by the referring party;
(f) where the ruling request relates to a grievance under regulation 3 it shall be accompanied by –
  (i) an affidavit, unless otherwise directed by the Office, signed by a person authorised by the referring party attesting to the fact that the matters set out in the ruling request are to that person's knowledge and belief true and accurate;
  (ii) subject to (f)(iii), a non-refundable processing fee in the amount $1500 and an undertaking in respect of any and all costs arising from any process or procedure initiated by the Office in respect of the ruling request in the event that it is

determined that the referring party should pay such costs; and

(iii) where the referring party is an individual, the Office may use its discretion to reduce the processing fee of $350.

5. (1) The referring party shall provide a copy of the ruling request to the respondent on the same date on which it has submitted the ruling request to the Office.

(2) The Office, within three (3) business days of receiving an urgent expedited ruling request, will confirm whether it will accept or decline the ruling request. If the Office accepts the urgent expedited ruling request, the Office will endeavour to prepare its preliminary ruling within five (5) business days from the date the confirmation was sent to the parties and will prepare its final ruling within five (5) business days from the date that the preliminary ruling is circulated to the parties. The deadline for the Office's production of its ruling will be dependent on staff availability, and the amount of evidence provided as well as the parties' responsiveness to the Office's request during the time period.

(3) The Office, within five (5) business days of receiving a ruling request that is not urgent, will confirm whether it will accept or decline the ruling request.

(4) The respondent shall file with the Office and provide the referring party with a written response within twenty (20) days following the date that the Office has confirmed receipt and acceptance of the ruling request.

(5) The Office may, if the circumstances so require, notify the respondent that the respondent should file a written response within a shorter period of time than that specified under paragraph (4).

6. Section 107 "Confidentiality" of the Act shall apply to all dispute resolution submissions made to the Office.

7. Upon receipt of a ruling request, the Office may take one or more of the following actions –

(a) request such other information from any person as may be affected by the dispute as it may deem necessary;
(b) direct the parties to commence or continue reasonable efforts to resolve the dispute;
(c) decline to determine the dispute on the basis of one or more of the grounds set out in regulation 9;
(d) issue a notice for a public hearing pursuant to regulation 11 setting out procedures and issues to be addressed; and the Office may issue a notice to other authorisation holders and the general public

advising of the public hearing and inviting submissions on the issues to be addressed;

(e) require, if the Office considers it appropriate and reasonable in the circumstances, parties to proceed on an expedited basis with respect to all matters provided for in these regulations;

(f) appoint a mediator to deal with the dispute and in such event may establish the terms of reference of any mediator which shall include –

(i) whether the outcome of any such mediation will be binding;

(ii) the procedures for such mediation;

(iii) any dates by which the mediation process will be concluded; and

(iv) guidelines for the allocation of costs among the parties;

(g) act as adjudicator of the dispute and, where it decides to do so, it shall establish its own terms of reference and procedures for such adjudication which shall include –

(i) whether the outcome of any such adjudication will be binding;

(ii) dates by which the adjudication process will be concluded; and

(iii) guidelines for the allocation of costs among the parties; or

(h) such other course of action as it considers necessary to resolve the dispute.

8. Where the Office has received two (2) or more ruling requests of a similar nature involving one or more of the same parties it may, for reasons of efficiency and consistency, elect to deal with such ruling requests as if they were a single dispute. In these circumstances, the cost of the dispute will only be CI $750 and the Office will notify the referring parties accordingly.

9. The Office may decline at any time to deal with a ruling request if it decides that -

(a) the matter is not within the Office's jurisdiction;

(b) the subject matter of the dispute does not sufficiently concern any obligation under the Act, any other legislation in effect in the islands or any agreement entered into by an authorisation holder or any order of the Office which deals with or relates to electricity, information and communications technology, water, wastewater and fuels sectors;

(c) the dispute is vexatious;

(d) the dispute is an abuse of process;

(e) the referring party has not made reasonable efforts to settle the dispute with the respondent;
(f) the subject matter of the dispute is trivial, misconceived, defective or lacking in substance;
(g) the subject matter of the dispute is repetitive in a particular market, and the Office has instead decided to commence an investigation into the whole market;
(h) the subject matter of the dispute is the terms and conditions of an existing contract between the referring party and respondent;
(i) the subject matter of the dispute is also the subject of current court litigation as between the parties;
(j) it does not have sufficient resources to apply to the matter;
(k) it is not in the best interests of the Islands for the dispute to be granted; or
(l) the referring party failed to pay fees or give undertaking or owed any other funds to the Office.

10. In determining a dispute, the Office shall act expeditiously, and in doing so may have regard to –

(a) the subject matter of the dispute;
(b) the need to inquire into and investigate the dispute;
(c) the objectives and functions of the Office; and
(d) all matters affecting the merits, and fair settlement of the dispute.

11. (1) The Office may elect to conduct a hearing to assist it in its ruling of a dispute.

(2) In conducting a hearing, the Office shall not be bound by the rules of evidence governing the admissibility of evidence in judicial proceedings.

(3) A hearing shall be held in public unless the Office determines that information to be disclosed in a hearing is "confidential" as defined in the Act in which case the Office may direct that any hearing, or part of a hearing, shall be conducted in private.

(4) The Office may require that any submission by any party or any witness to the hearing be verified by affidavit and shall identify the person from whom such verification is required.

(5) The Office shall notify parties in advance of the date and subject matter of any proposed hearing and shall afford the parties and its witnesses, if any, a reasonable opportunity to be heard at the hearing.

(6) The parties to the dispute may elect to be represented at a hearing in whole or in part by a third party, including a legal representative.

(7) The parties to the dispute shall file a written brief no later than fifteen (15) days prior to the hearing outlining their position and shall include any materials in support of such position.

(8) A member of the Office is authorised to administer to a witness an oath or affirmation sincerely and truly declaring to provide true evidence.

12. (1) The Office may hear submissions or allow participation in a proceeding, public or otherwise, from other authorisation holders or members of the public to assist in making a ruling concerning a dispute.

(2) Where the Office proceeds in accordance with paragraph (1) the Office shall send copies to such persons of the ruling request and, if received, a copy of the response of the respondent and thereafter such persons shall file their written submissions within twenty (20) days of receipt of notice with the Office and copy the other parties to the dispute.

(3) The Office may request further written submissions from some or all parties as it considers appropriate.

13. A referring party may, at any time, withdraw a dispute by notice in writing to the Office and the respondent before the Office makes its final ruling, provided that it agrees and settles any costs occasioned by the ruling request or any matter arising from such request as determined by the Office.

14. The Office may, in its discretion, appoint an independent third-party expert to assist it in the resolution of a dispute and any costs arising from such appointment may be allocated to either party by the Office as part of any ruling or dispute withdrawal.

15. (1) In any proceeding pursuant to these regulations, the Office may elect to receive submissions as to costs and the Office may, having regard to the circumstances of the dispute, award costs to be paid by any party to a dispute.

(2) An award of costs may include –

(a) any or all of the costs of the Office;
(b) any or all the costs of the parties

(3) An award of costs may also include the cost of an expert retained by the Office or any party for assistance in a specific dispute.

(4) In determining costs, the Office may request relevant information from parties such as their legal, consulting and other professional fees and the Office may take into account prevailing market rates for professional services, the reasonableness of any costs incurred and any other relevant matter.

16. (1) The rulings of the office, whether preliminary or final, shall be in writing and state the reasons upon which they are based.

(2) The Office shall make its final rulings available to the public via the Office's website.

17. (1) Subject to paragraph (2), a ruling of the Office shall be binding upon the parties.

(2) Rulings of the Office in response to a ruling request are not subject to the Office's duty to consult as stated in section 7 of the Act.

(3) Nothing in these regulations precludes a party to a dispute from appealing a ruling of the Office to the Grand Court on a matter of law.

(4) A ruling which is expressed to take effect forthwith shall not be suspended but shall continue in operation unless the Court hearing the appeal otherwise orders.

18. An authorisation holder who fails to comply with or contravened these Regulations is liable to an administrative fine under section 91 of the Act. A person, other than an authorisation holder, who fails to comply with or has contravened these Regulations, has committed an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or both.

Made in Cabinet the [XX] day of [X], 20[XX]

[ ]

Clerk of the Cabinet