

FS 2021 - 1 - Consultation

## Draft Final Determination on Proposed Fuels Market Definition

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Launch Date: 28 January 2021

Closing Date for comments: 18 February 2021



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## A. Introduction

1. The Utility Regulation and Competition Office ('OfReg' or the 'Office') is the independent multi sector regulator with responsibility for the key utilities providers in the Cayman Islands, including the fuel sector ('Fuel Sector'), in addition to the electricity, information and communications technology ('ICT'), water, and wastewater sectors.
2. Different decisions by the Office will affect persons and organisations throughout the country in different ways. It is therefore important that the Office makes regulatory decisions and proposes new regulations with the appropriate input from persons with sufficient interest or who are likely to be affected by the outcome of such decisions. Consultation is an essential aspect of regulatory accountability and transparency and provides the formal mechanism for these persons to express their views in this manner. The requirement for the Office to consult is mandated in its enabling legislation.
3. Under its enabling and foundational legislation, the Office has several principal mandates. One of these principal mandates is to assure competition, transparency, efficiency and innovation in the Fuel Sector, along with its continuing function of ensuring safety and compliance across the Fuel Sector. The Office may do so by making administrative determinations, decisions, orders and regulations.
4. The Office is in the process of considering options for a comprehensive regime to effectively monitor and regulate the Fuel Sector, in order to achieve the Office's mandate in respect of the Fuel Sector. As a part of this process, the Office is undertaking a comprehensive market study of the Fuel Sector with the objective of defining the relevant markets within the Fuel Sector, and then assessing the extent and effectiveness of competition within these markets, reflecting the types and grades of fuels currently and potentially on the market in the Cayman Islands. The first element of the market study is the assessment of and report on the market definitions for the purposes of competition assessment for the various fuels markets in the Cayman Islands. The second element of the market study will be a comprehensive competition assessment of the relevant markets and assessment of the potential options (if any) for regulatory reforms of those markets.
5. The purpose of this consultation paper is to seek the views of sectoral providers, the general public, and other interested parties, on the Office's draft determination on the Market Definition Report in relation to the Fuel Sector ('the draft Market Definition Report').

## B. Legal Framework

6. The Office is guided by its statutory remit in developing the draft Market Definition Report, notably the provisions which follow.
7. The Utility Regulation and Competition Law (2019 Revision) (the 'URC Law') is the principal legislation governing the Office's mandate in respect of the Fuel Sector. Alongside the URC Law, the sector-specific legislation governing the Fuel Sector are the Dangerous Substances Law (2017 Revision) (the 'DS Law') and its supporting Regulations ('DS Regulations'), and the Fuel Market Regulation Law (2017) (the 'FMR Law').
8. Section 6(1) of the URC Law outlines that the principal functions of the Office, in the markets and sectors for which it has responsibility, include "*to promote appropriate effective and fair competition*", "*to protect the short and long term interests of consumers in relation to utility services*", and "*to promote innovation and facilitate economic and national development*".
9. Section 5(1)(b) of the FMR Law provides that one of the functions of the Office in relation to the Fuel Sector is to "*promote fair competition in the fuel sector*".
10. Section 5(1) of the FMR Law states in part:
  5. (1) *The Office shall supervise the fuel sector in accordance with its jurisdiction under the Utility Regulation and Competition Law, 2016 and, in doing so, the functions of the Office are as follows—*
    - (a) *To implement policy objectives set out in directions issued by Cabinet pursuant to the Utility Regulation and Competition Law, 2016;*  
[...]
    - (b) *promote fair competition in the fuel sector;*  
[...]
    - (e) *to monitor the prices of fuel;*  
[...]
    - (k) *to prevent discrimination against, or preferential treatment of, any person in the fuel sector, and to prevent monopolistic control of any segment of the chain of supply of fuel; and*
    - (l) *to minimise barriers to entry for new participation and investors in the fuel markets.*
11. Section 6(2)(o) of the URC Law states that the Office, in performing its functions and exercising its powers under the URC Law or any other Law,

may “conduct research and studies into any matter or technology which may be relevant to its functions and publish its findings, if appropriate”.

12. Section 7(1) of the URC Law requires the Office, before issuing an administrative determination which in the reasonable opinion of the Office is of public significance, “... to allow persons with sufficient interest or who are likely to be affected a reasonable opportunity to comment on the draft administrative determination.”

## C. Market Definition Report Conclusions

13. The Office considers that it is in the interest of the public to consider options for a comprehensive regime to effectively monitor and regulate the Fuel Sector, in order to achieve the Office’s mandate in respect of the Fuel Sector including to promote fair competition in the Fuel Sector. This process will ensure that the Fuel Sector delivers the most competitive and desirable outcomes possible for residents, businesses, and other stakeholders in the Cayman Islands.
14. The draft final Determination on Market Definition Report is attached to this consultation document as “APPENDIX 1”, and is summarised in the paragraphs below. The Office strongly encourages respondents to read the draft final Determination on the Market Definition Report prior to submitting comments, or to answering the consultation questions in the next section, as this summary is not intended to be exhaustive.
15. Market definition is generally the first step in a comprehensive competition assessment of markets. A defined “market” in competition assessment and competition law is the product and geographic space in which rivalry and competition take place; it identifies those products and locations that may potentially constrain the economic decisions of participants in that field of competition, including because there is strong substitution among the products/services and geographies within the defined market if there is sufficient price incentive for customers to substitute among the alternative products/services and geographies.
16. The Market Definition Report concludes that the markets for all relevant fuels in the Fuel Sector should be segmented into separate markets according to the relevant level of the supply chain, consisting of:
  - The importation of the relevant fuel.
  - The wholesale and bulk sale and marketing of the relevant fuel.
  - The retail sale and marketing of the relevant fuel.
17. On a product dimension, the Market Definition Report concludes that markets should be delineated as follows:

- Gasoline, and all gasoline-ethanol blends with 10% or less of ethanol.
  - Gasoline-ethanol blends with more than 10% of ethanol, including pure ethanol.
  - Petroleum-derived diesel, and all diesel-biodiesel blends with 20% or less of biodiesel.
  - Diesel-biodiesel blends with more than 20% biodiesel, including pure biodiesel.
  - Jet fuel and kerosene.
  - Propane (LPG).
  - Natural gas (including LNG and CNG).
  - Aviation gas.
  - Butanes.
  - Acetylene.
  - Hydrogen.
  - Methanol.
18. On a geographic dimension, the Market Definition Report concludes that markets should be delineated as follows:
- World-wide for the market for imported fuels.
  - Cayman Islands-wide for the retail and wholesale markets for the aviation fuels (jet fuel and kerosene, and aviation gas).
  - Grand Cayman, Cayman Brac, and Little Cayman separately for all other fuels product markets at the wholesale and retail supply chain levels.

## D. Consultation Questions

19. Based on the above, the Office invites all interested parties to submit their comments, with supporting evidence, on the following question:
- What are your thoughts on the proposed definition of the fuel markets, outlined in the Market Definition Report? Please provide reasons.

## E. How to Respond to This Consultation

1. This consultation is conducted in accordance with the Consultation Procedure Guidelines determined by the Office and found on the Offices website.<sup>1</sup>

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<http://www.ofreg.ky/upimages/commonfiles/1507893545OF20171DeterminationandConsultationProcedureGuidelines.pdf>

2. The Office considers that because the draft final determination on Proposed Fuel Market Definition is published as part of this consultation, this consultation will be conducted over a period of twenty-one (21) days. As noted above, section 7(1) of the URC Law states that prior to issuing an administrative determination of public significance, the Office shall “*issue the proposed determination in the form of a draft administrative determination.*” The Office considers the attached draft Regulations to be a “*draft administrative determination*” for the purposes of section 7(1).
3. All submissions on this consultation should be made in writing and must be received by the Office by **5 p.m. on 18 February 2021** at the latest.
4. The Office will post any comments received within the stated deadline on its website by **5 p.m. on 4 March 2021**.
5. Submissions may be filed as follows:

By e-mail to:  
[consultations@ofreg.ky](mailto:consultations@ofreg.ky)

Or by post to:  
Utility Regulation and Competition Office  
P.O. Box 10189  
Grand Cayman KY1- 1002  
CAYMAN ISLANDS

Or by courier to:  
Utility Regulation and Competition Office  
3<sup>rd</sup> Floor, Alissta Towers  
85 North Sound Rd.  
Grand Cayman  
CAYMAN ISLANDS

6. If a respondent chooses to file any information in confidence with OfReg, it should, *at the time of making its filing*, also file redacted versions for the public record along with the reasons for each confidentiality claim and the other requirements for confidentiality claims as specified in section 107 of the URC Law.
7. If a respondent chooses to apply to the Office for an extension of the time to file comments or reply comment, it must do so no less than four (4) days before the day of the existing deadline, include a complete and detailed justification for the request, and copy all other respondents (if known) *at the same time* as it applies to the Office. The other respondents (if applicable) may comment on the application for an extension within two (2) days of

submission of the application, copying all other respondents *at the same time*. The Office reserves the right not to accept applications for extensions that do not satisfy these requirements. However, at no time will the Office accept an application for an extension submitted after the deadline in question has passed.

8. The Office expects to issue a Determination regarding the Market Definition by the end of first (1st) quarter of 2021.





## APPENDIX 1

### Proposed Draft Market Definition Report