

# OF 2017 – 1 – Determination Consultation Procedures Guidelines

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**UTILITY REGULATION AND COMPETITION OFFICE  
THE CAYMAN ISLANDS**

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# OF 2017 – 1 – Determination – Consultation Procedures Guidelines

## 1. Background

1. The Utility Regulation and Competition Office (the '**Office**' or '**OfReg**') is the independent regulator for the electricity, information and communications technology ('**ICT**'), water, wastewater and fuels sectors<sup>1</sup> in the Cayman Islands. The Office also regulates the use of electromagnetic spectrum and manages the .ky Internet domain.
2. Different decisions by the Office will affect persons and organisations throughout the country in different ways. It is therefore important that the Office make regulatory decisions 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.
3. In line with the principles of natural justice and international best practice, the Office considers that an effective consultation process should:
  - a. involve, as far as possible, all persons who are affected or are likely to be affected, whether big or small companies, industries, consumers and community groups or individuals;
  - b. explain the different options being considered by the Office before a decision is made, if applicable;
  - c. assist those with views to respond fully and in an informed manner; and
  - d. provide a vehicle for the Office to hear, consider and respond to responses received.

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<sup>1</sup> The Legislation giving the Office jurisdiction in the water, wastewater and fuels sectors came into force on 22 May 2017.

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4. The requirement for the Office to consult is mandated in its enabling legislation. Section 6 (4) of the *Utility Regulation and Competition Office Law 2016* ('**URC Law**') requires the Office, among other things, to act in a timely manner, in a reasonable, proportionate, impartial and consistent manner, to operate transparently to the full extent practicable, and to engage in reasoned decision-making based on the administrative record. Before issuing an administrative determination which in the reasonable opinion of the Office is of public significance, section 7 (1) of the URC Law requires the Office "... to allow persons with sufficient interest or who are likely to be affected a reasonable opportunity to comment on the draft administrative determination."
  5. The Office is mandated by the URC Law to publish its standard procedure for seeking comments prior to issuing administrative determinations of public significance within six months of the coming into force of the URC Law,<sup>2</sup> that is, by **16 July 2017**. This affirms that consultation is an essential aspect of regulatory accountability and transparency and underscores the importance of engaging the public, licensees and stakeholders in the Office's decision making process.
  6. On **4 April 2017**, the Office issued a public consultation, **OF 2017 – 1 – Consultation**,<sup>3</sup> seeking the views of interested parties on the Office's proposed Consultation Procedure Guidelines (the '**Guidelines**'). The **OF 2017 – 1 – Consultation** document included both the proposed Guidelines and the consultation questions which are listed in Appendix 1 to this Determination.
  7. On **11 April 2017**, the Office published an Extension Notice<sup>4</sup> extending the deadline for responses to OF 2017 – 1 – Consultation from **5 May 2017** to **8 May 2017**.

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<sup>2</sup> Section 7 (2) of the URC Law.

<sup>3</sup> OF 2017 - 1 – Consultation, "Consultation Procedures Guidelines".  
<http://www.ofreg.ky/Themes/ThemeDefault/images/Consultation-Procedure-Guidelines.pdf>

<sup>4</sup> [http://www.ofreg.ky/Themes/ThemeDefault/images/Extension-Notice\\_OF%202017-1-Consultation.pdf](http://www.ofreg.ky/Themes/ThemeDefault/images/Extension-Notice_OF%202017-1-Consultation.pdf)

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## 2. Legal Framework

8. In establishing these Guidelines, the Office is guided in particular by its statutory duties.

9. **Section 6 (4) of the URC Law** reads:

*(4) In performing its functions and exercising its powers under this or any other Law, the Office shall –*

*(a) act in a timely manner;*

*(b) rely on self-regulation and co-regulation, where appropriate;*

*(c) act in a reasonable, proportionate, impartial and consistent manner;*

*(d) operate transparently, to the full extent practicable;*

*(e) engage in reasoned decision-making, based on the administrative record;*

*(f) act without favoritism to any sectoral participant, including any sectoral participant in which the Government has a direct or indirect financial interest;*

*(g) subject to section 12, act free from political interference.*

10. **Section 7** sets out the Office's duty to consult prior to issuing administrative determinations.

*7. (1) Prior to issuing an administrative determination which, in the reasonable opinion of the Office, is of public significance, and subject to specific procedures under sectoral legislation, the Office shall –*

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- (a) *issue the proposed determination in the form of a draft administrative determination;*
- (b) *allow persons with sufficient interest or who are likely to be affected a reasonable opportunity to comment on the draft administrative determination; and*
- (c) *give due consideration to those comments with a view to determining what administrative determination (if any) should be issued.*
- (2) *The Office shall, within six months of the date of commencement of this section, publish its procedures for seeking comments, which shall include –*
- (a) *how the Office will issue draft administrative determinations under subsection (1);*
- (b) *how consultations will be published;*
- (c) *the minimum time for responding to consultations;*
- (d) *how the Office will publish comments or summaries of comments received;*
- (e) *guiding principles setting out how the Office will consider comments received and how it will publish its reasons for its decisions after it has considered those comments; and*
- (f) *guiding principles for determining when the Office may derogate from the standard procedures.*
- (3) *An administrative determination is of public significance if it relates to a sectoral utility and is likely to lead to –*
- (a) *a major change in the activities carried on by the Office under this or any other Law;*

(b) *a significant impact on a sectoral provider; or*

(c) *a significant impact on members of the public.*

(4) *Where the Office intends to issue an administrative determination, the Office shall –*

(a) *give written notice of that intention, to any person with sufficient interest or likely to be affected by the proposed determination; and*

(b) *afford that person an opportunity to make written representations to show cause why the Office ought not to make such a determination.*

11. **Section 8 of the URC Law** sets out the Office’s duty to publish administrative determinations.

*8. Subject to section 12, the Office shall take proportionate measures to make available to the public administrative determinations which in its opinion, are of public significance and, for this purpose, shall –*

(a) *publish such administrative determinations on its website as soon as possible after these are issued;*

(b) *take steps to ensure that the website is regularly updated and available to the public; and*

(b) *maintain copies of administrative determinations at its principal office, for inspection by the public on request during normal business hours without charge.*

12. **Section 12** sets out the Cabinet’s power to give general directions to the Office.

*12. (1) The Cabinet may, after consultation with the Board, give to the Office general and lawful directions in written form as to the policy to be followed by the Office in the*

*performance of its functions and the exercise of its powers under this or any other Law, and the Office shall give effect to such directions.*

*(2) Any direction given by the Cabinet shall be published in the Gazette but no such direction shall apply in respect of a matter pending before the Office on the day on which the directions are published.*

13. Pursuant to **section 2 of the URC Law**, “administrative determination” includes:

*“any order, regulation, direction, decision, or other written determination by which the Office establishes the legal rights and obligations of one or more sectoral participants, but does not include an advisory guideline”*

14. “Advisory guideline” is defined under **section 2 of the URC Law** to mean:

*“a written statement, issued by the Office, that provides the Office’s views regarding a specific matter, but is not legally binding”*

### 3. Responses to OF 2017 – 1 – Consultation

15. The Office received responses to OF 2017-1 – Consultation from the Water Authority-Cayman (**‘WA’**) on **4 May 2017**, from Digicel Cayman Limited (**‘Digicel’**), from Cable and Wireless (Cayman Islands) Limited trading as Flow (**‘Flow’**) on **5 May 2017**, and from Katherine Briggs on behalf of Refuel (**‘Refuel’**) on **8 May 2017**. These responses were published to the Office’s website on **19 May 2017**.<sup>5</sup>
16. When providing their comments, Digicel, Flow and Refuel answered each of the Office’s consultation questions and, where the comments were substantive, the Office summarises them below.<sup>6</sup> WA submitted a number

<sup>5</sup> [http://www.ofreg.ky/Themes/ThemeDefault/images/Responsestoof\\_1\\_Consultation.pdf](http://www.ofreg.ky/Themes/ThemeDefault/images/Responsestoof_1_Consultation.pdf)

<sup>6</sup> In some cases, the party merely noted they had no views on the matter at this time.



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of “*preliminary comments*” in the form of questions, and these are noted opposite the appropriate consultation question below.

17. Digicel also submitted a number of preliminary observations. Digicel considered the Guidelines to be “*a step in the right direction*” but did not believe they should define the extent of the engagement between the Office and operators. Digicel also stated that stakeholders have a reasonable expectation that the Office will adhere to the Guidelines and will give stakeholders some certainty regarding the process by which it will engage with stakeholders. Digicel recommended, as a result, that the Guidelines should be considered ‘an administrative determination of public significance,’ rather than ‘guidelines,’ and that any changes to the Guidelines should be subject to prior consultation.

### 3.1 Question 1

**Provide your views on how the Office might best encourage input from interested parties.**

18. Digicel submitted that any decision made by the Office would necessarily have an impact on the public and the Office should therefore publish proposed administrative determinations and invite comments, unless the matter concerns dispute resolution proceedings between a limited number of disputants on specific commercial issues which only affect the disputants. Where the matter would be perceived by the general public to have a greater impact on them, Digicel recommended the Office take steps to actively engage the public. Licensees, having the greatest interest, should be afforded the maximum opportunity to comment and the Office’s communication with them should extend beyond the posting of notices on the Office’s website and should occur at every stage of the decision-making process, not just at the onset of the formal consultation process.
19. Flow noted that the proposed Guidelines indicated the Office “*may email existing licensees*” prior to initiating a consultation, and suggested that the Office be required instead to notify all licensees by email prior to or when initiating a consultation.

### 3.2 Question 2

**Provide your views on the process the Office proposes to adopt for consultations where the regulatory or other measures are technically**

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**complicated with important legal and economic implications. What considerations should be used to determine when there should be a particular form of consultation?**

20. Digicel noted that the Office does not necessarily have a true appreciation of the technical complexities and financial implications of a proposed measure as it relates to that licensee, without first engaging that licensee. Digicel recommended, therefore, that any administrative determination which results in changes to licence conditions or to the rights and obligations of licensees be subject to some form of consultation or engagement with licensees.
21. Digicel considered that the Office should set out in the Guidelines the different forms of consultation that it might adopt and the different factors that it would consider when deciding the method of consultation to be applied in a given case. However, Digicel recommended that the Office adopt a general presumption of publishing all proposed determinations and inviting comments from the public. This presumption should be set aside in cases of "*party-specific dispute resolution proceedings*" which involve a limited number of parties and specific commercial issues or where meaningful input cannot be made without reference to commercially-sensitive information which is not available to the public. Digicel re-iterated its recommendation that the Office actively engage the public in matters which are perceived to have greater impact on them, and actively engage individual licensees throughout the decision-making process.
22. Flow queried the effect of the Guidelines if, as stated by the Office, "*they do not have binding legal effect.*" Flow considered that, while the URC Law permits the Office to depart from standard procedures, the URC Law requires that the Guidelines articulate the grounds for derogating from those standard procedures.
23. Flow noted that the Office has an obligation under the URC Law to consult prior to any regulatory intervention which may cause a major change in Office activities or have a significant impact on relevant persons. Because either of these factors, not both, is sufficient to require consultation, Flow recommended that the "and/or" in paragraph 13 of the Guidelines be replaced with "or." Flow also noted that the obligation to consult is premised on these two factors, not on the technical complexity of the issue (which may be relevant to how the Office conducts the consultation).

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### 3.3 Question 3

#### **Provide your views on the proposed structure and content of notices of consultation, consultation documents, and consultation decisions.**

24. Digicel noted that the proposed structure and content of notices of consultation and consultation documents were generally acceptable. Digicel recommended that the Office send individual notices to each licensee as a rule and confirm receipt, not just publish the notice on its website and at its discretion publish in public media or send individual notices to licensees.
25. With respect to the Office's proposal to publish a list of focused questions in consultation documents, Digicel noted this might give the impression that the Office would not consider other issues. Digicel recommended instead that the Office invite comments in general and include the focused list as a form of assistance to respondents.
26. Digicel also recommended that, where the Office engages the public through informal methods of consultation, a record of the submissions must be prepared if the Office is to take them into consideration in its decision-making.
27. Flow noted the need for prescribed timelines for responding to consultations. However, Flow submitted that most if not all of the Office's consultations would affect Flow, as the incumbent licensee, directly or indirectly. Flow requested that the Office consider Flow's ability to participate efficiently and effectively in consultations, and submitted that coordination between Flow and the Office on consultation timelines is an imperative to the utility of the consultation.
28. The WA recommended that the Office provide a notice for all formal consultations to all licensees, and submitted that there should be clarity on the consultative process for complex technical issues.
29. Refuel recommended that consultation papers be made available in Word format, and that the Office should be required to email licensees on the day of launch of a formal consultation as a method of notification. Refuel also noted the Office's proposal to conduct surveys or opinion polls, and submitted that, in smaller markets, the results of such surveys or polls might not be representative of the actual market.

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## 3.4 Question 4

**Provide your views on whether the Office should make all submissions and documents filed with the Office available to the public as a matter of course, subject to any justified confidentiality claims.**

30. Digicel included its answer to this question in its answer to question 5 below.
31. Flow stated that all submissions and documents filed by the Office or by an intervenor should be made public, unless that submission or document (or part of it) is confidential.
32. Refuel submitted that all submissions and documents filed with the Office should be made available to the public as a matter of course, subject to any justified confidentiality claims.

## 3.5 Question 5

**Provide your views on the proposed procedures to assess and make determinations on confidentiality claims.**

33. Digicel submitted that submissions made in response to consultations should be published, subject to any justified confidentiality claims. However, Digicel strongly recommended that there be specific classes of information which should be presumed to be confidential and treated as such by the Office even in the absence of detailed reasons and explanations to justify confidentiality. Digicel considered that this approach would make the submission of responses to consultations less cumbersome when the quality of submissions would be enhanced by the inclusion of information which would not otherwise be disclosed to the public.
34. Flow noted that the proposed process for establishing confidentiality and the treatment of confidential information by the Office follows the existing process already in place by the Office, and stated it had no material objections to them.

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## 3.6 Question 6

### **Provide your views on the proposed time frames for the various types of consultations.**

35. Digicel expressed agreement with the proposal that there should generally be a 4-week/30-day period for responses to consultations, which may be extended or shortened as appropriate under the circumstances. Digicel submitted, however, that publishing a draft determination with a consultation would never be appropriate without also affording affected parties an opportunity to make representations or without duly considering all the views that bear on the issue.
36. Flow submitted that the proposed time frames were largely arbitrary and did not offer useful guidance. Flow noted that a variety of circumstances can affect the time needed by intervenors to prepare comments, respond to RFIs and answer interrogatories, and submitted that it is more appropriate to make determinations on the duration of a public consultation on a case-by-case basis.
37. The WA noted there should be provisions to extend a period of consultation.

## 3.7 Question 7

### **Provide your views on any other matters you consider relevant to this consultation.**

38. In Digicel's view, the proposal that the report on the consultation include a general review of the submissions that were given during the consultation process was not appropriate. Rather, a full report should be provided, summarising all key submissions on a point by point basis, identifying the person making the submission, and outlining both the Office's reply to each and the extent to which the Office is minded to accept it.
39. Digicel also submitted that, as a general rule, there should be more than one round of consultation. This would provide an opportunity for parties to clarify any points and give the Office the benefit of assessing all sides to an issue before arriving at a determination. Where the issue is non-contentious, Digicel submitted that the second round could set out the Office's draft determination.

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40. Flow expressed concern over the Office’s existing process of regulatory intervention and public consultation. Flow submitted there had been several instances of government intervention based on no, or deficient, consultation. Flow insisted that the Office undertake a public consultation in all instances where a regulation or market intervention impacts a licensee, that licensees be provided sufficient time to respond, that the comment period be determined based on consultation with licensees, and that comments and questions provided to the Office be addressed appropriately and given sufficient consideration.
  41. The WA proposed that the Guidelines be reviewed on a periodic basis, for example, every five years or in response to any other event which would trigger a review.
  42. Refuel recommended the Guidelines be reviewed and amended at regular intervals, for example, every two years.

#### 4. The Office’s Analysis

43. As noted in **OF 2017 – 1 – Consultation**, the Guidelines set out the general guidelines and principles to be followed by the Office in its approach to conducting consultations with members of the public, licensees and other stakeholders on administrative determinations which, in the opinion of the Office, are of public significance. As set out in the URC Law,<sup>7</sup> these are administrative determinations which relate to a sectoral utility, and which are likely to lead to:
  - (a) a **major change** in the activities carried on by the Office under the URC Law or any other law;
  - (b) a **significant impact** on a sectoral provider; or
  - (c) a **significant impact** on members of the public.
44. These Guidelines are therefore relevant to all members of the public, licensees and stakeholders who could be affected by the regulatory decisions made by the Office.

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<sup>7</sup> Section 7 (3) of the URC Law.

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45. The Office has reviewed and carefully considered all of the comments submitted by the respondents. The Office notes that there was general support for the Office's proposals and that no respondent objected to the proposed objectives for conducting consultations, although all respondents proposed various amendments and additions to the Guidelines.
46. The Office **considers** that its objectives for conducting consultations with the public, licensees and other stakeholders are:
- a. to obtain input, information and feedback from persons whose rights or interests may be materially affected by the proposed administrative determination;
  - b. to ensure regulatory transparency and objectivity;
  - c. to protect consumer interests, where appropriate;
  - d. to ensure adequate and accurate information is shared between the public, licensees, other stakeholders and the Office;
  - e. to strengthen public, licensee and other stakeholder understanding, participation and confidence in the regulatory process;
  - f. to ensure that the public, licensees and other stakeholders are given the appropriate opportunity to express their views;
  - g. to ensure that the Office has investigated the necessary aspects of an issue so that the public, licensees and other stakeholders are adequately informed of the issues surrounding a matter; and
  - h. to acquire substantive information and knowledge from the public, licensees and other stakeholders on any issue, in order for the Office to make informed decisions.
47. The Office notes, though, that not every consultation will be general in nature, and there may be instances where a consultation is targeted at specific persons who the Office believes has a material interest in the matter under consideration.
48. Based on the submissions of the respondents, the Office has identified the following main issues to be addressed:

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- a. the nature of the Guidelines;
  - b. the scope of administrative decisions subject to the prior consultation requirement;
  - c. the scope of the Office’s notification obligation;
  - d. the appropriate timeframes for responding to consultation documents, including handling extension requests;
  - e. procedures for claiming confidentiality;
  - f. evidence to be considered by the Office in making determinations; and
  - g. the form and content of determination documents.
49. The Office will address each of these in turn below.

## 4.1 The Nature of the Guidelines

50. Digicel submitted that the Guidelines should not be considered as such, but rather that any decision to adopt them or to modify them should be considered to be “*administrative determinations of public significance.*” This would mean, among other things, that the Office would need to consult with the public prior to making any changes to the Guidelines.
51. Flow questioned the impact the Guidelines would have on the consultation process if they did not have legal effect, and submitted that the Office could not depart from them except as specified within them.
52. The Office notes that **section 7 (2) of the URC Law** requires the Office to publish its “*procedures for seeking comments.*” The individual paragraphs of that section specify that the procedures are to describe how the Office is to consult with the public on certain matters (paragraphs (a), (b) and (d)) and to set out guiding principles for considering comments, publishing determinations and departing from standard procedures (paragraphs (e) and (f)). As they are procedural guidelines, the Office does not consider that they are “administrative determinations.” Rather, they are more in the nature of “advisory guidelines.”



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53. The Office considers that the underlying purpose of establishing standard written procedures<sup>8</sup> for consultations is to ensure regulatory transparency and objectivity, to strengthen public, licensee and other stakeholder understanding, participation and confidence in the regulatory process itself, and to ensure the Office’s decision-making processes are as complete and robust as possible in all circumstances.
54. However, the Office also needs to maintain the flexibility to modify its decision-making process in specific cases if individual circumstances so warrant. The overriding objective of the Office is to ensure that persons who have a sufficient interest in an administrative determination, or who are likely to be affected by it, have a reasonable opportunity to submit written representations commenting on that draft administrative determination. If, in the specific circumstances, adherence to the published procedures would not promote that overriding objective or otherwise be unfair, the Office must have the flexibility to adopt different procedures, provided the overriding objective is respected. The Office has, however, amended the Guidelines to provide greater transparency concerning the circumstances when the Office may determine to adopt procedures other than the standard procedures.
55. It would be, however, inefficient and unduly disruptive to the decision-making process of the Office if it were required in each instance to consult with interested parties on whether and how to deviate from the standard procedures prior to issuing the actual consultation. The Office, therefore, **considers** that the URC Law does not require it to do so, nor would it be helpful in all cases.
56. Nor does the Office consider that the URC Law imposes a duty on the Office to treat a decision to modify the Guidelines as an “administrative determination of public significance.” The Office notes, though, that consultation with the public on proposed changes to the procedures in the Guidelines would help it achieve a number of the objectives set out in paragraph 46 above. Accordingly, if the Office considers, either of its own motion or on request by a member of the public, that the Guidelines need to be modified in a material or substantive manner, the Office intends to publish a public consultation on the proposed changes.

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<sup>8</sup> As distinct from the purpose of conducting public consultations.

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## 4.2 Determinations Subject to Consultation

57. Both Digicel and Flow commented that paragraph 14 of the **OF 2017 – 1 – Consultation** document suggested that the Office would only consult if the matter in question was “*technically complex*” and that this was not a relevant basis for deciding whether to consult. The WA requested the Office provide greater clarity on the consultative process for “*complex technical issues*.”
58. The Office considers that its statutory duty to consult with the public prior to making determinations flows from **section 7 of the URC Law**. That section requires consultation where the decision to be made is an “*administrative determination of public significance*,” which is a determination which “relates to a sectoral utility and is likely to lead to (a) a major change in the activities carried on by the Office under this or any other Law; (b) a significant impact on a sectoral provider; or (c) a significant impact on members of the public” [underlining added]. As the Office had stated in paragraph 13 of the proposed Guidelines, the Office will consult on all matters which satisfy these criteria.
59. The Office notes that a determination which is “major” or “significant” is not necessarily technically complex, although they often are. However, the language of paragraphs 14 of the proposed Guidelines could be read to exclude from consultation major or significant matters which are not technically complex. This is not the Office’s intent, and the final Guidelines have been amended to remove the language which led to this confusion.

## 4.3 Notification to the Public

60. All respondents submitted that the Office should provide formal notice to all licensees when the Office initiates a public consultation. Digicel and Flow suggested that the Office should be required to email notices of consultation to licensees, rather than simply post a notice on its website. Refuel suggested both licensees and stakeholders should receive notices of consultation by email.
61. Digicel suggested that the Office needed to engage actively with licensees at all stages of the decision-making process, not just at the onset of a public consultation. Digicel also recommended that the Office take additional steps to actively engage the public in the consultative process, such as public meetings or the targeting of special interest groups, where

- the subject matter could be perceived to be of interest to the broader public.
62. The Office notes that the URC Law does not specify in detail how the Office is to engage with sectoral participants, except for the requirement to consult in the case of administrative determinations of public significance. Nor does it specify how the Office is to notify sectoral participants of the launch of a public consultation, except that the Office is to “*give written notice of that intention [to issue an administrative determination], to any person with sufficient interest or likely to be affected by the proposed determination.*”<sup>9</sup> The Office considers, therefore, that the intent of the URC Law is to give the Office the flexibility to determine its own procedures within the overall framework of the URC Law.
63. The Office notes that the Digicel, Flow and WA proposals provide for notice to “licensees.” While none of the respondents clarified who they meant by the term “licensee,” the Office has many licensees, authorisation holders and permit holders across several sectors of the economy of the Cayman Islands. A given proposed administrative determination might affect one, many or all of these persons. It is not reasonably feasible for the Office to identify in advance with absolute certainty all of the persons who might have an interest in a given matter and contact each of them individually. Moreover, the Office cannot reliably predict all of the time when a person operating in one sector may have an interest in a matter involving another sector. The proposals to provide formal or email notice to “licensees” would as a result be disproportionate and still not necessarily be fully effective at reaching all affected persons.
64. For this reason, the Office **considers** that the most effective and fairest method of providing notice to the public of a consultation on a proposed administrative determination is to post a written notice of consultation on its website ([www.ofreg.ky](http://www.ofreg.ky)). This approach ensures all interested persons, including those the Office might not so easily identify, receive the same notice at the same time. The onus is on the public to check the Office’s website on a regular basis to determine whether there are any consultations of interest to them.
65. The Office notes that, given its objectives listed in paragraph 46 above, it seeks to have as wide an input into matters as possible, as this results in

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<sup>9</sup> Section 7 (4) (a) of the URC Law.

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- more robust evidence-based decision making. As a matter of practice, therefore, the Office also publishes notices of consultation in such forms as may be appropriate in the specific circumstances.
66. For example, the Office routinely sends notices of consultation by email to sectoral providers who are likely to have an interest in a specific matter. The Office may also issue press releases to the general public or post items on social media. Consistent with the suggestion made by respondents to more actively engage with the public, the Office will consider issuing press releases when it initiates a consultative process as a matter of standard practice as well. However, whether the Office issues these additional forms of notice to licensees and to the public will depend upon the nature of the specific matter in question and the Office does not consider it appropriate to be required to employ them in each and every case.
67. The Office notes Digicel's comments that the Office should seek to engage licensees at all stages of the decision-making process and not just at the initiation of a public consultative process. The Office notes that it engages with its licensees, authorisation holders and permit holders in various ways at various times as may be required or appropriate. However, in the case of public consultations, the Office considers that no one person potentially affected by the proposed administrative determination should have better or more opportunities to make representations regarding the Office's potential decisions than any other person. The Office considers this to be an important principle of fairness.
68. The Office also notes Flow's comments regarding "*the disproportionate obligation such consultations impose on Flow, as the incumbent Licensee*" and that Flow's "*participation in such consultations is required to ensure that these impacts are understood and appreciated by the Office prior to its decision to intervene.*" Following on from this, Flow requested:
- "... that the Office consider Flow's ability to participate efficiently and effectively in Public Consultations. Prior to commencing a Public Consultation, coordination between the Office and Flow on Public Consultation's [sic] timelines is an imperative to the utility of the consultation and will help ensure that our [Flow's] participation is effective and efficient."*
69. The Office considers that participation by Flow and others in public consultations is important for the Office to understand fully the impact of

potential administrative determinations on those persons, and encourages them to participate to the greatest extent possible. The Office is also mindful of the resources of its licensees, authorisation holders and permit holders, and endeavours to take these into account whenever possible when planning its public consultations.

70. However, the Office notes that, if its consultations have the impact on Flow as described, this is largely a consequence of the nature of the businesses that Flow has chosen to undertake. Further, the Office considers that it would be highly inappropriate for it to coordinate its timelines with any of its licensees, authorisation holders or permit holders. Such an approach would be unfair to other licensees, authorisation holders and permit holders, and would lack the impartiality and transparency that the URC Law requires.

#### 4.4 Time Frames for Responding to Consultations

71. The Office notes there was little overlap in the responses on this matter. Digicel was generally in agreement with the proposed standard time frames, although the company considered the proposal to include draft determinations in an initial consultative document was inappropriate, unless parties had a full and proper opportunity to make representations, as it could suggest the Office had already come to a position on the matters. Digicel also suggested that the Office include a second round in its consultations, to allow respondents to comment on each other's submissions, before the Office makes a determination based on those submissions.
72. Flow commented that the proposal to apply explicit time limits was largely arbitrary and did not offer useful guidance. Rather, Flow considered that the Office should set time frames for consultation on a case by case basis.
73. The WA requested that the Office include provisions for extending the duration of a consultation.
74. The Office notes that **section 7 (2) (c) of the URC Law** requires the Guidelines to include "*the minimum time for responding to consultations.*" The Office considers, therefore, that setting out standard time frames for responding to consultations in the Guidelines is both necessary and not arbitrary, and that it is consistent with the Office's objectives "*to ensure regulatory transparency and objectivity,*" to "*ensure that the public, licensees and other stakeholders are given the appropriate opportunity to express their views,*" and "*to acquire substantive information and*

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*knowledge from public, licensees and other stakeholders on any issue, in order for the Office to make informed decisions.”* The Office further considers that adopting time frames on a case by case basis as proposed by Flow would be contrary to the clear language of the URC Law.

75. The Office notes the suggestion to include provisions for extending the duration of a consultation. While the Office has done so in the past on a case by case basis, the Office considers that it would be useful to include such provisions in the Guidelines, in order to clarify the process it expects to follow. Accordingly, the Office has included a new paragraph 44 in the Guidelines. Parties may request extensions of the time to respond, however, any such requests must be fully justified and must be formally filed with the Office no later than four (4) days before the deadline in question. If the consultation has reached a stage where other parties are known, the party requesting the extension must also file the request with those other parties *at the same time*. These other parties may then respond to the proposal within two (2) days. For the avoidance of doubt, the Office will under no circumstances accept requests to extend a deadline made after the deadline has passed.
76. The Office considers that this approach achieves the appropriate balance between affording parties sufficient time to respond fully and effectively to consultations and ensuring the Office’s proceedings are conducted in a timely and transparent manner. It also ensures that no party is unfairly advantaged by seeing the submissions of others before submitting its own or granting one party extra time so late in the process that other parties are unable to derive similar benefit.
77. The Office notes Digicel’s comments regarding the inappropriateness of including a draft determination with an initial consultation document without affording parties a full and proper opportunity to comment. The Office considers such concerns are misplaced. To the contrary, sharing with interested parties the specifics of the Office’s proposed approach is consistent with transparency and enables parties to address specific issues in the proposal, confirm its appropriateness, or suggest viable alternatives. The Office notes that it did not propose to include draft determinations in all circumstances, but rather in a limited set including where the matter is urgent or the matter has already been the subject of consultation.
78. The Office notes Digicel’s recommendation that the Office include in all consultations a period for ‘reply comments.’ The Office notes that this proposal is consistent with its practice and will amend the Guidelines to

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reflect this. The Office will generally provide for a two-week period for reply comments.

## 4.5 Confidentiality Claims

79. The Office notes that Digicel, Flow and Refuel agreed with the Office's proposal that all submissions and documents filed in connection with a public consultation should be made available to the public, subject to any justified confidentiality claims.
80. Digicel proposed that specific classes of information be treated as confidential, even in the absence of detailed reasons and explanations to justify confidentiality, provided they are marked confidential. The Office notes that **section 107 (4) of the URC Law** requires persons who are claiming that certain information is confidential to provide "*a full justification for its claim.*" Simply marking information or a document confidential does not amount to a justification. Consequently, the Office will not adopt Digicel's proposal.

## 4.6 Alternative Methods of Engagement

81. Two of the respondents commented on the Office's proposal to use other methods of engaging the public as may be appropriate in the circumstances in order to obtain views and information from sectoral participants.
82. Digicel recommended that, if the Office engages in more informal methods such as face-to-face meetings and if the Office intends to rely upon any of the submissions made through such methods in its decision-making, the Office should ensure that a written record of submissions is made.
83. Refuel did not consider the use of surveys or opinion polls to be adequate methods of gathering information on smaller companies unless the surveys or polls were targeted to the users of the services of those companies. Refuel expressed concern that, in a small market with small sample sizes, the results of surveys and polls might not be representative of the actual market.
84. As noted at paragraphs 24 and 25 of **OF 2017 – 1 – Consultation**, the Office intends to request written responses to consultations. Such an approach promotes the transparency of the Office's decision-making

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process and allows the Office to make determinations after having considered all of the evidence available to it on the record.

85. The Office considers that having methods to obtain information in addition to the formal consultation process can be useful in certain circumstances to complement the consultation process and can lead to an improved record. The Office notes the submissions made by respondents regarding the importance of a written record and the limitations inherent in surveys and polls in a small market, and will take these factors into account when deciding whether to use additional information-gathering measures or informal consultation methods in a given consultation process.

## 4.7 Determination Documents

86. Digicel submitted that the Office's statement issuing its determination, which will also serve as the report on the consultation, should not be limited to providing "*a general review of the submissions that were given during the consultation process,*" particularly when the Office is "*considering issues of some technical complexity.*" Digicel recommended instead that the Office provide a full consultation report, summarising all key submissions received, identifying who made them, and outlining the Office's reply.
87. The Office will review and consider all submissions made by respondents to a consultation in a timely manner. All such submissions will be placed on the public record, subject to any justified confidentiality claims. Given that all submissions will be available to all respondents, the Office considers that the level of detail with which the Office summarises them in its report on the consultation will depend on a number of factors, including the materiality of the comment made to the issues being considered in the consultation and the complexity of the matter or its analysis. There may be circumstances where a detailed summary might not be necessary, for example, where all parties expressed similar views on a matter. Alternatively, if the views expressed on a matter were divergent, controversial or complex, a more detailed point-by-point report may be appropriate. The Office will, however, endeavour to provide respondents and other interested parties sufficient detail to explain its reasoning in any given case.



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## 4.8 Other Matters

88. Both the WA and Refuel recommended that the Office review these Guidelines on a periodic basis, although they proposed different periods.
89. The Office noted at paragraph 11 of **OF 2017 – 1 – Consultation** that it *“will update these Guidelines from time to time to take account of best practice and ongoing experience with their application as well as comments received from interested parties.”* The Office **considers** that the Guidelines should be reviewed from time to time but that, as procedural guidelines, it is not necessary for the Office to prescribe a period for review.
90. Digicel expressed concern that the Office’s proposal to include a list of focused questions in its consultation documents might suggest that the Office is not prepared to engage in other issues which may be relevant to the consultation. Digicel suggested that the Office *“word the invitation to comment so as to attract comments in general.”*
91. The Office notes Digicel’s concerns, and notes that the inclusion of focused questions is indeed intended to guide respondents. The Office further notes that it also includes in its consultations an invitation to respondents to comment on any other matter which may be relevant to the consultation. The Office **considers**, therefore, that Digicel’s concern has already been addressed.

## 5. The Office’s Determinations

92. Having considered all the submissions made by the respondents, the Office determines that it will adopt the Consultation Procedures Guidelines as proposed in **OF 2017 – 1 – Consultation**, with the following changes:
  - a. section D is amended to clarify that the Office will consult on all matters which fall within the scope of section 7 of the URC Law;
  - b. paragraph 11 is amended to describe the guidelines the Office will follow when determining to depart from the Guidelines;
  - c. a new paragraph 44 is included to provide for requests to extend the period for responses to consultations; and

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- d. a new paragraph 40 is included to provide for a period for reply comments in the consultative process, except where circumstances do not warrant it.
93. A copy of the final Consultation Procedures Guidelines is attached as **Appendix 2** to this Determination and will be published on the OfReg website ([www.ofreg.ky](http://www.ofreg.ky)).

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## Appendix 1

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### Consultation Questions

**Question 1:** Provide your views on how the Office might best encourage input from interested parties.

**Question 2:** Provide your views on the process the Office proposes to adopt for consultations where the regulatory or other measures are technically complicated with important legal and economic implications. What considerations should be used to determine when there should be a particular form of consultation?

**Question 3:** Provide your views on the proposed structure and content of notices of consultation, consultation documents, and consultation decisions.

**Question 4:** Provide your views on whether the Office should make all submissions and documents filed with the Office available to the public as a matter of course, subject to any justified confidentiality claims.

**Question 5:** Provide your views on the proposed procedures to assess and make determinations on confidentiality claims.

**Question 6:** Provide your views on the proposed time frames for the various types of consultations.

**Question 7:** Provide your views on any other matters you consider relevant to this consultation.



## Appendix 2

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### Final Consultation Procedure Guidelines

# OF 2017 - G1 - Guidelines Consultation Procedure Guidelines

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Publication Date: 7 July 2017

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## A. Introduction

1. The Utility Regulation and Competition Office (the '**Office**') is the independent regulator for the electricity, information and communications technology ('**ICT**'), water, wastewater and fuels sectors<sup>1</sup> in the Cayman Islands. The Office also regulates the use of electromagnetic spectrum and manages the .ky Internet domain.
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 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. Section 6(4) of the *Utility Regulation and Competition Office Law 2016* ('**URC Law**') requires the Office, among other things, to act in a timely manner, a reasonable, proportionate, impartial and consistent manner, to operate transparently to the full extent practicable, and to engage in reasoned decision-making based on the administrative record. 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".
4. The Office is mandated by the URC Law to publish its standard procedure for seeking comments prior to issuing administrative determinations of public significance.<sup>2</sup> This affirms that consultation is an essential aspect of regulatory accountability and transparency and the importance of engaging the public, licensees and stakeholders in the Office's decision making process.
5. These Guidelines are relevant to all members of the public, licensees and stakeholders who could be affected by the regulatory decisions made by the Office.

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<sup>1</sup> The Legislation giving the Office jurisdiction in the water, wastewater and fuels sectors came into force on 22 May 2017.

<sup>2</sup> Section 7 (2) of the URC Law.

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## B. Consultation Procedure Guidelines Objectives

6. This document sets out the Consultation Procedure Guidelines and principles to be followed by the Office in its approach to conducting consultations with members of the public, licensees and other stakeholders on administrative determinations which, in the opinion of the Office, are of public significance. As set out in the URC Law,<sup>3</sup> these are administrative determinations which relate to a sectoral utility, and which are likely to lead to:
  - (a) a **major change** in the activities carried on by the Office under the URC Law or any other law;
  - (b) a **significant impact** on a sectoral provider; or
  - (c) a **significant impact** on members of the public.
7. These Guidelines will standardise the process by which consultations are conducted by the Office, and will conform to international best practice. As such, an effective consultation should:
  - (a) involve, as far as possible, all persons who are affected or are likely to be affected, whether big or small companies, industries, consumers and community groups or individuals;
  - (b) explain fully the different options being considered by the Office before a decision is made, if applicable; and
  - (c) assist those with views to respond fully and in an informed manner;
  - (d) provide a vehicle for the Office to hear, consider and respond to responses received.
8. While the Office will generally adhere to these Consultation Procedure Guidelines, it recognises the need for the procedure to be sufficiently flexible and dynamic to address the exigencies of the relevant regulated sectors.
9. The Office is proposing to set the following objectives for conducting consultations with the public, licensees and other stakeholders:
  - (a) to obtain input, information and feedback from persons whose rights or interests may be materially affected by the proposed administrative determination;
  - (b) to ensure regulatory transparency and objectivity;

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<sup>3</sup> Section 7 (3) of the URC Law.



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- (c) to protect consumer interests, where appropriate;
  - (d) to ensure adequate and accurate information is shared between the public, licensees, other stakeholders and the Office;
  - (e) to strengthen public, licensee and other stakeholder understanding, participation and confidence in the regulatory process;
  - (f) to ensure that the public, licensees and other stakeholders are given the appropriate opportunity to express their views;
  - (g) to ensure that the Office has investigated the necessary aspects of an issue so that the public, licensees and other stakeholders are adequately informed of the issues surrounding a matter; and
  - (h) to acquire substantive information and knowledge from public, licensees and other stakeholders on any issue, in order for the Office to make informed decisions;

though the Office notes that not every consultation will be general in nature, and there may be instances where a consultation is targeted at specific persons who the Office believes has a material interest in the matter under consideration.

10. The Office will update these Guidelines from time to time to take account of best practice and ongoing experience with their application as well as comments received from interested parties. When the Office does so, it expects to consult with interested parties before adopting any changes.
11. Although these Guidelines set out the approach the Office expects to take, they do not have binding legal effect. If the Office decides to depart from the Guidelines in any particular consultation, the Office will set out its reasons for doing so.<sup>4</sup> Circumstances in which the Office may depart from the Guidelines include:
  - (a) where the Office may need to ensure that adequate and accurate information has been provided before dissemination and/or investigate the necessary aspects of an issue;
  - (b) where the Office may need to implement steps in order to protect consumer or public interests in urgent circumstances; and

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<sup>4</sup> See section 7 (2) (f) of the URC Law.

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- (c) where the Office considers a consultation may need different stages or a different format<sup>5</sup> in order to prevent unfairness between consulting parties or place a consulting party in a disadvantaged position.

## C. Method of Consultation

12. The Office will determine the method of the consultation process to take place in respect of any administrative determination proposed to be issued by the Office, depending on the nature of the administrative determination itself,<sup>6</sup> the number of parties potentially affected by the administrative determination, and the impact on the regulated industry and the consultations with the public, licensees and sectoral utility.

## D. Major Change/Significant Impacts

13. The Office notes that the statutory obligation to consult applies where the proposed administrative determination is likely to lead to a **major change** in the activities of the Office and/or a **significant impact** on the relevant persons. Setting out in guidelines in what circumstances such changes/impacts may be relevant is not appropriate, as the result of each change/impact will depend on the facts and circumstances of each proposed determination.
14. As a general approach, the Office envisages that it will consult in circumstances where the proposed administrative determinations have important legal and economic implications. These types of matters usually have the potential to impact a large number of parties and have significant public interest. For example, the determination of whether a licensee has significant market power (SMP) and is therefore dominant in a relevant market, or, the determination related to the pricing of services offered to other licensees between the licensees, are likely to be such matters.

## E. Notice of Consultation

15. Notice of a consultation to be conducted by the Office initiates the formal consultation process. The Office recognises that there may be a need by the public, licensees and other stakeholders to plan in order to respond effectively to consultations. Interested parties may also need to allocate resources to a

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<sup>5</sup> For example, the Office may implement additional steps to the consultation process, e.g. conducting a working group.

<sup>6</sup> Different procedures and time frames may apply, for example, to adjudications under Part 8, to orders made under Part 13, or to the issuance of administrative fines under Part 14 of the URC Law.

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- consultation to fully analyse the regulatory issues under consideration by the Office once the consultation has been published.
16. The Office proposes, as the norm, to publish a notice on the day of the launch of any formal consultation it intends to conduct on its website. The publication of the notice will be posted on the Office website at [www.ofreg.ky](http://www.ofreg.ky). Notice of the consultation may also be effected through publication in national newspapers or public announcements on radio stations that broadcast throughout the Islands, if the Office considers the circumstances of the consultation to warrant it. In addition, the Office may email existing licensees and other stakeholders based on a circulation list developed as a result of previous consultations.
  17. The Office proposes that the content of the notice of consultation should include the following:
    - (a) title of consultation;
    - (b) goals and substance of the consultation;
    - (c) address of website from which downloadable documents can be found;
    - (d) procedures and timelines for submission of responses and comments;
    - (e) contact information for the relevant Office personnel to which queries may be addressed; and
    - (f) any other relevant information.
  18. The Office emphasises that there will be prescribed timelines for responding to the consultation, once the consultation has been published, and any comments received after the given deadline are unlikely to be considered. It is important to ensure the timely conduct of such consultations, for the resources of the Office to be efficiently utilised, that those persons responding to the consultation do so within the given timelines.

## F. Consultation Documents

19. Consultations will typically include a consultation document setting out the background, issues to be considered, and questions to be answered. The content of a consultation document will usually be developed with the internal expertise of the Office. The specialised nature and subject matter of a regulatory issue may also require the Office to engage the services of consultants, advisory bodies, industry groups or other qualified persons. This level of external participation could be at any stage of the consultation process, or there could be more than one consultation process leading to the adoption of an administrative determination. The Office, therefore, proposes to engage

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- consultants, industry groups and other such persons where it is deemed necessary in the consultation process to develop complex technical issues in the consultation document, and to assist with providing answers to responses from the public, licensees and other stakeholders to such issues.
20. The Office will follow a consistent approach in designing each consultation document. The Office proposes the consultation document to include:
- (a) a front cover with the name of the consultation and the closing deadline for responses;
  - (b) a page listing the contents;
  - (c) the main body of the document (which will state the reasons for the consultation, the preliminary position of the Office on a particular regulatory issue if applicable, the consultation process, etc.);
  - (d) a list of focused questions;
  - (e) the contact name of whom responses should be addressed to, and details of where responses should be submitted, along with other procedures for submissions including deadlines for responses and comments, and information on claiming confidentiality;
  - (f) annexes (which may include forms, graphs, tables, diagrams, etc.); and
  - (g) a glossary where necessary.
21. The Office also proposes to implement the following additional measures, as may be required on a case by case basis, with a view to making the consultation as effective as possible, and to acquiring as much information as possible to enable the Office to make informed decisions:
- (a) the use of research to understand the views, needs and behaviour of persons and organisations involved in, or concerned about the sectors regulated by the Office;
  - (b) the gathering of information on smaller companies and organisations by conducting surveys and opinion polls; and
  - (c) reaching out to people and community groups who have an interest in the decisions by having road shows, public meetings and open seminars.
22. When relevant, the Office also proposes to engage the public, Licensees and other stakeholders through other, more informal, methods from time to time. Such informal methods will complement the consultation process and should

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- assist all potential respondents to consultations to better understand the issues under consideration. Such methods could involve:
- (a) holding face-to-face meetings in the available time;
  - (b) using the Office website (<http://www.ofreg.ky>) to gather feedback online and to provide detailed background information;
  - (c) briefing the media through news releases; and
  - (d) comments and reactions gleaned from social media, etc.
23. The Office will decide whether to apply these additional measures on a case by case basis.

## G. Responses to Consultation

24. The Office will generally request written responses to its consultations. Written responses to consultations allow persons to fully express their views, and explain why they hold the views they do. Written responses also allow respondents to support their statements with evidence, and other interested parties to challenge the views and evidence presented by the respondents. Finally, written responses provide an avenue for respondents to raise issues that may not have been contemplated by the Office in the consultation process, to which the Office can effectively respond.
25. The importance of written responses to the Office's consultations is that they allow the Office to keep an accurate record of the position of the consultation respondents. There will be occasions where the number of responses to a consultation may be large. The Office has a statutory duty to give due consideration to all comments prior to issuing administrative determinations of public significance.<sup>7</sup> It is therefore important that the Office avail itself of the written responses of each consultation respondent in order to properly inform its decision.

## H. Confidential Responses to Consultation

26. The Office believes it is important for everyone interested in a regulatory issue to see the views expressed by the consultation respondents. In the interest of

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<sup>7</sup> See section 7(1)(c) of the URC Law.

transparency and consistent with section 107 of the URC Law,<sup>8</sup> the Office proposes to make all submissions received in response to its consultations available to the public subject only to the objective confidentiality of the information received. Although the Office will respect requests to keep certain views and information confidential, the Office will evaluate all requests for confidentiality in line with relevant legal provisions, and will not publish or divulge information that is, in its opinion, deemed confidential in accordance with section 107 (3) of the URC Law.

27. The Office proposes to adopt the following procedure for the effective handling of confidential information submitted to it by consultation respondents:
- (a) any claim for confidentiality **must be accompanied at the same time as the submission** by detailed reasons justifying the claim;
  - (b) where it is asserted that specific harm would be caused to the person claiming confidentiality, sufficient details must be provided as to the nature and extent of such harm with supporting evidence;
  - (c) a person claiming confidentiality in connection with the information must file with the Office **at the same time as the submission** a redacted version of the information or response to be placed in the public domain;
  - (d) where the Office determines that the justification offered by the person claiming confidentiality meets the standard for confidential treatment in section 107 of the URC Law, the Office shall –
    - (i) issue an order granting the request;
    - (ii) refrain from publishing the full document or information in response to the consultation; and
    - (iii) publish the redacted version of the document or information.

<sup>8</sup> Section 107 of the URC Law provides that the Office is not required to publish or otherwise divulge information that in the view of the Office is:

- (a) *a trade secret of any person;*
- (b) *information, the commercial value of which would be, or could reasonably be expected to be, destroyed or diminished by disclosure;*
- (c) *other information, the disclosure of which would have, or could reasonably be expected to have, an adverse effect on the commercial interests of any person to whom the information relates;*
- (d) *information-*
  - (i) *that is given to the Office by a third party (other than another sectoral utility) in confidence on the understanding that it would be treated as confidential; and*
  - (ii) *the disclosure of which would be likely to prevent the Office from receiving further similar information required by the Office to properly fulfil its functions;*

*or*
- (e) *information, the disclosure of which would constitute a breach of a duty of confidence provided for by a provision of a Law.*

It follows that the Office is expected to make available to the public all other information.

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- (e) where the Office determines that the justification offered by the person claiming confidentiality does not meet the standard for confidential treatment in section 107 of the URC Law, the Office shall –
- (i) issue an order denying the request; and
  - (ii) either-
    - return the information to the submitting party, in which case the Office shall not consider or rely on the information; or
    - after providing the submitting party with notice and an opportunity to comment, disclose the information, if the Office determines that disclosure would be in the public interest.
28. It is important to be aware that, in accordance with the terms of the URC Law, information that is determined to be confidential under this process may still be disclosed to the Minister responsible for the Office, to the Minister responsible for the sector to which the confidential information is relevant, to the Members of the Board or to the staff of the Office, to a court, or, where necessary to conduct a public consultation, to specific parties pursuant to a non-disclosure agreement.
29. Persons submitting redacted versions of a document or information are solely responsible for ensuring the redaction is complete or effective. The Office will not make any determinations with respect to documents or information for which confidentiality was not claimed and will not redact any documents itself – such documents or information will be presumed to be public. Nor will the Office perfect any incomplete redaction or return to the submitting party for perfection an incomplete or imperfect redaction, for example, in situations where the information might still be visible notwithstanding the redaction. The onus is on the submitting party to make proper and complete claims for confidentiality, including redactions of documents or information.
30. The Office does not endorse or require any particular method of redacting documents or information, provided that the chosen method is not misleading. A document or information will be considered to be properly redacted if the chosen method clearly indicates that text or information has been deleted and shows the location and extent of the deletion.

## I. Comments to Written Responses

31. The overall responses to a consultation may demonstrate a misunderstanding by respondents of a position on a regulatory or other measure the Office proposes to issue. Additionally, the publication of the responses by respondents to a consultation may warrant follow-up comments by some respondents (cross-submissions). In such circumstances, the Office proposes to allow an intermediate stage in the consultation process period for respondents to view

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other responses and make comments on them, either for correcting factual errors, clarifying ambiguities or for putting forward counter arguments.

32. As these are intended to be comments, or responses to comments, or responses already filed, the Office proposes not to permit comments to written responses to be used as a means for respondents to raise new issues and will provide a shorter timeline in which to make such 'Reply' comments.

## J. Decisions Made by the Office Following a Consultation

33. The Office will review and assess each response carefully and with an open mind. All submissions will be considered and analysed. The Office's analysis of the responses will be included with its administrative determination (i.e. its statement). The statement by the Office, which will also serve as a report on the consultation, will provide a general review of the submissions that were given during the consultation process. It will detail the Office's response to the submissions, and give reasons for its final position.
34. The Office will publish its administrative determinations in accordance with the URC Law, by publishing them on its website and maintaining copies at its principal office for inspection by the public on request during normal business hours without charge.<sup>9</sup>

## K. Duration of Consultation

35. The Office is of the opinion that the period for consultation should always take place within a reasonable timeframe. Under the URC Law, the Office must specify a minimum time for responding to consultations. Unless the URC Law requires the Office to follow a specific timeframe for issuing a specific regulatory measure, the Office has discretion to shorten or lengthen this timeframe depending on the circumstances. However, the Office also believes that where a consultation is too short, some of those with important views to share may not have sufficient time to prepare responses. If a consultation lasts too long, the sectoral utility may have changed significantly, or opportunities to act in an efficient manner may be missed. The Office must therefore strike a balance between the two.
36. The Office therefore proposes that, in the normal course, a period of four [4] weeks be provided to respond to consultations.
37. Where consultations are complex and/or interest to a wide range of persons, licensees and stakeholders (especially those who may require a longer time to

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<sup>9</sup> See section 8 of the URC Law.



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- respond), a period of between six [6] and eight [8] weeks will normally be allotted for responses to such consultations.
38. However, there may be circumstances where a shorter timeframe is appropriate and the Office proposes a period of up to three [3] weeks for consultations which fall within one or more of the following categories:
- (a) It is a matter of urgency due to public safety or security issues;
  - (b) where there is a need to complete a proceeding within a specified timetable because of market developments or other factors which require that the matter be concluded within a short period (e.g. promotional events by telecommunications service providers);
  - (c) the issue has already been the subject of a recent consultation;
  - (d) a proposal by the Office will have limited effect on a sectoral utility;
  - (e) a proposal by the Office is only a limited amendment to existing policy or regulation, or
  - (f) where the matter is procedural or a requirement imposed for instance in a policy direction that is deemed as urgent.
39. In these circumstances, the Office may issue the draft determination with the initial consultative document.
40. The Office will include in the normal course in its consultation procedures a two (2) week period for respondents to a consultation document to comment on each other's submissions. The purpose of such a period for reply comments is not, however, to permit respondents to introduce new positions or submissions. The Office may shorten or lengthen this period for reply comments, depending upon the circumstances. The Office may also choose not to include such a period, for example, where the matter is urgent or the consultation itself follows another recent consultation on the same subject.
41. For complex matters, the Office may issue a series of consultations to solicit the views of stakeholders. The Office may, for example, initially issue a consultation that addresses the high-level issues and the Office's preliminary approach to addressing those issues. The Office would then review the comments to this initial high-level consultation before launching a second consultation, which would focus on issues of implementation.
42. In some circumstances, the Office may initially intend to conduct a single-phase consultation but, upon review of the responses to the consultation, it may become clear that a second phase of consultation is required. This is particularly likely to be the case where the responses propose a significant change in

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- approach, or it appears that licensees may need to require assistance from external advisers, such economic or financial advisers, to respond fully to the consultation.
43. Whenever the Office launches a consultation it will provide clear timelines for each phase of the consultation, including the anticipated date for the publication of its administrative determinations.
  44. Where a party to a consultation considers that the period for a consultation ought to be extended, it may apply to the Office for a change to the consultation period. The application must be submitted at least four (4) days before the day of the existing deadline and must include a complete and detailed justification for the request. Where the other parties to the consultation are known (for example, the Office has already published comments by parties to the proceeding), the application must be copied to all such parties at the same time as it is submitted to the Office, and these parties will be afforded two (2) business days to comment on the application for an extension. The Office reserves the right not to accept applications for extensions that do not satisfy these requirements. However, under no circumstances will the Office accept an application for an extension submitted after the deadline in question has passed.

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