

OF 2018 – 1 - Consultation Proposed Anti-Competitive Practices Rules



Launch Date: 23 March 2018

Closing Date for comments: 11 May 2018



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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 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. Under its enabling and foundational legislation, the Office has several principal functions. One of these principal functions is to protect the short and long term interests of consumers in relation to utility services. The Office may do so by making administrative determinations, decisions, orders and regulations.
4. The purpose of this consultation paper is to seek the views of operators, the general public, and other interested parties regarding the draft Utility Regulation and Competition (Anti-Competitive Practices) Rules, 2018 (***the draft Rules***) in relation to all sectors regulated by the Office (Annex 1).

B. Legal Framework

5. The Office is guided by its statutory remit in developing the draft Rules, notably the provisions which follow.
6. **Section 6(1)(b)** of the Utility Regulation and Competition Office Law 2016 (***URC Law***) outlines that one of the principal functions of the Office, in the markets and sectors for which it has responsibility, is “*to promote appropriate and fair competition...*”.
7. **Section 6(2)** of the URC Law states that the Office in performing its functions and exercising its powers under this or any other Law, the Office may “*adopt remedies to deter anti-competitive conduct by sectoral providers in any relevant market.*”

8. The URC Law provides that agreements by or between sectoral providers or between one or more sectoral providers and any other person, decisions by sectoral providers or concerted practices which prevent, restrict or distort competition are prohibited under **section 66**, unless the agreements are exempted under the Law. **Section 70** prohibits any conduct on the part of one or more sectoral providers which amounts to the abuse of a dominant position in a market or sector for which the Office has responsibility.
9. Under **Section 82(1)** of the URC Law, the Office “*may prepare and publish rules providing the appropriate amount of any penalty*” with the approval of Cabinet.
10. **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. Objectives of the Draft Anti-Competitive Practices Rules 2018

11. The Office considers that it is in the interests of the public to promote appropriate and fair competition as required by the URC Law. As one of its functions, the Office is mandated to deter anti-competitive conduct by sectoral providers in any relevant market. Therefore, the Office under its power under **section 82(1)** has prepared draft rules in relation to anti-competitive practices.
12. The draft Rules are attached to this consultation document, and are summarised in the paragraphs below. The Office strongly encourages respondents to read the draft Rules prior to submitting comments, or to answering the consultation questions in the next section, as this summary is not intended to be exhaustive.
13. The attached draft Rules address the amount of penalties may impose upon any licensee who, intentionally or negligently, infringes **sections 66 or 70**, as well as the Office’s power to impose periodic penalties.
14. The main objectives of the draft Rules are to outline the process the Office will follow in relation to the imposition of penalties as a result of a person infringing **sections 66 and 70** of the URC Law, as well as the range of the penalty amounts.

15. The draft Rules also address the Office's power to impose periodic penalties.

D. Consultation Questions

16. Based on the above, the Office invites all interested parties to submit their comments, with supporting evidence, on the following questions:

Question 1: What are your views on the proposed draft Anti-Competitive Practices Rules?

Question 2: Do you agree with the level of penalties specified in the draft Rules?

Question 3: Please provide your views on any other matters you consider relevant to this Consultation.

E. How to Respond to This Consultation

17. This consultation is conducted in accordance with the Consultation Procedure Guidelines determined by the Office and found on the Office's website.¹
18. The Office considers that because the draft Rules are published as part of this consultation, this consultation will be conducted as a single-phase consultation over a period of **fifty (50) days**. If, upon review of the responses to the consultation, it becomes clear that a second phase of consultation is required, a further notice will be issued accordingly. 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 Rules to be a "*draft administrative determination*" for the purposes of **section 7(1)**.
19. All submissions on this consultation should be made in writing, and must be received by the Office by **5 p.m. on 11 May 2018** at the latest.
20. The Office will post any comments received within the stated deadline on its website by **5 p.m. on 25 May 2018**.

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

21. Submissions may be filed as follows:

By e-mail to:
consultations@ofreg.ky

Or by post to:
Utility Regulation and Competition Office
P.O. Box 2502
Grand Cayman KY1- 1104
CAYMAN ISLANDS

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

22. The Office expects to issue a Determination on the matters addressed by this Consultation by the end of the third quarter of 2018.

F. Next Steps

23. After the Office issues the Determination, the Office will approach Cabinet under section 82(1) of the URC Law for their approval prior to publication.
24. Upon publication of these new Anti-Competitive Practices Rules pursuant to section 82(1) of the URC Law, the previous information and Communications Technology Authority (Penalties for Anti-Competitive Practices) Rules will be repealed.

OF 2018 – 1 - Consultation
Proposed Anti-Competitive Practices
Rules
ANNEX 1



CAYMAN ISLANDS



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

THE UTILITY REGULATION AND COMPETITION LAW, 2016

THE UTILITY REGULATION AND COMPETITION (ANTI-COMPETITIVE PRACTICES) RULES, 2018

ARRANGEMENT OF RULES

1. Citation.
2. Definitions.
3. Penalty for infringement.
4. Periodic penalty.

CAYMAN ISLANDS

THE UTILITY REGULATION AND COMPETITION LAW, 2016

THE UTILITY REGULATION AND COMPETITION (ANTI-COMPETITIVE PRACTICES) RULES, 2018

The Utility Regulation and Competition Office, in exercise of the powers conferred by section 82(1) of the Utility Regulation and Competition Law, 2016, makes the following rules-

1. These rules may be cited as the Utility Regulation and Competition (Anti-Competitive Practices) Rules, 2018.

Citation

2. In these rules-

Definitions

“Affiliate” in relation to a licensee, means any holding company of the licensee, any subsidiary of the licensee or any subsidiary of any holding company of the licensee;

“financial year” means the licensee’s financial year relevant to an anti-competitive investigation or determination and it may, in the Office’s discretion, be the current or previous financial year of the licensee;

“Law” means the Utility Regulation and Competition Law, 2016;

“section” means a section of the Law;

“Office” means the Utility Regulation and Competition Office, established by section 4 of the Law; and

“turnover” means the total amount of money or money’s worth earned by a licensee from all sources arising out of or in connection with the licensee’s business in or from the Cayman Islands in the licensee’s financial year (money or money’s worth earned from transactions with Affiliates are to be included as if those transactions are made at open market value on an arm’s length basis).

3. (1) The Office may impose upon any licensee who, intentionally or negligently, infringes section 66 or 70 a penalty-

Penalty for infringement

- (a) of not less than \$10,000; and
- (b) of not more than \$3,000,000.

(2) In fixing the amount of the penalty, the Office shall give due regard to the gravity and the duration of the infringement.

(3) The Office, prior to levying the penalty, shall give the licensee 14 days to show cause why both the penalty and the amount of the penalty should not be levied as a consequence of the infringement.

Periodic penalty

4. (1) Where the licensee, after the imposition of a penalty under rule 3, continues to carry out the actions to which the penalty relates, the licensee is liable for every day or part thereof on which the action continues to a periodic penalty of not less than \$5,000 and not more than \$25,000 per day and such penalty shall be imposed by the Office.

(2) The penalty under paragraph (1) above shall be calculated from the date that the licensee is notified of the decision and shall be imposed in order to compel the licensee to bring to an end an infringement of section 66 or 70 in accordance with a decision of the Office.

(3) Where the licensee has satisfied the obligation which the Office sought to enforce by imposing the periodic penalty, the Office may, notwithstanding paragraph (1) above, fix the total amount of the periodic payment at a lower figure than that which it could have imposed in accordance with paragraph (1).

Made by the Utility Regulation and Competition Office the [...] day of [...], 2018

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Chairman of the Board of the Office