

FS 2022 - 1 - Consultation
Cayman Island Fuel Sector
Draft Determination on
Foster Group Holdings Ltd. Acquisition of Home Gas Ltd.



Launch Date: 23 June 2022

Closing Date for comments: 6 July 2022



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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 utility 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 has reviewed an application submitted on 28 March 2022 by Foster Group Holdings Ltd (FGHL) through their attorney Appleby, for the purchase of the entire issued share capital of Home Gas Ltd. (HGL). The Office, in its assessment of the transaction, has determined that the acquisition is not anticipated to have an adverse effect on the sector and will not result in the substantially *lessening of competition* in the propane (relevant) market. The Office has further determined that the transaction would not likely have an effect which is contrary to the public interest in the Cayman Islands.
5. The purpose of this consultation paper is to seek the views of acquirer, licensee and other interested parties an opportunity to make representations regarding the transaction, and the Office's pending decision to give its consent to the acquisition (i.e. *Transfer of Shares* and *Change of Control* of HGL).

B. Legal Framework

6. The Office is guided by its statutory remit to review applications made to the Office under Part 8 of the Utility Regulations and Competition Act (the 'URC Act') for the issuance or transfer of shares and provide and refuse.
7. The URC Act is the principal legislation governing the Office's mandate in respect of the Fuel Sector. Alongside the URC Act, the sector-specific legislation governing the Fuel Sector are the Dangerous Substances Act (2017 Revision) (the 'DS Act') and its supporting Regulations ('DS Regulations'), and the Fuel Market Regulation Act (2017) (the 'FMR Act').
8. Section 6(1) of the URC Act 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 44(1) of the URC Act states *“the Office may at any time determine that a sectoral provider has significant market power in a relevant market.”*
10. Section 46(1) of the URC Act provides that *“a licensee that is a company [...] shall not issue shares, and a person owning or having an interest in shares in the licensee shall not transfer, otherwise dispose of or deal in those shares or that interest where the issuance, transfer, disposal or dealing would thereby result in a total shareholding or total voting rights, by the person acquiring the shares or voting rights by the issuance, transfer, disposal or dealing, of more than ten per cent of the issued share capital or total voting rights of the licensee, without the prior written consent of the Office whose consent shall not be unreasonably withheld; but the Office may refuse to give its consent where among other things, it considers that the giving of the consent may result in a lessening of competition in the operation of networks or the provision of utility services.”*
11. Section 47(1)(a) and (b) provides that *“without prejudice to any other Law; or any further obligations in a licence to notify the Office of changes in control, no change in control of a licensee can be implemented without obtaining the prior written approval of the Office in accordance with this Part.”*
12. Section 49(a)(b) requires that *“the Office, on receiving a notification made under section 47(2), shall form an opinion whether a proposed change of control of a licensee would have, or be likely to have, the effect of substantially lessening competition in a market in the Islands; and in the case of a change of control involving a media public interest, whether the change of control would have an effect, or would be likely to have an effect contrary to the public interest.”*
13. Subsection 52(1)(a) requires that *“where the Office, on receiving a notification made under this Part forms an opinion that the proposed change of control would not have adverse effects, the Office shall issue an administrative determination giving consent to the merger;”*
14. Subsection 52(2) provides that *“the Office shall, before forming any opinion or issuing any adjudication under subsection (1) — (a) give the acquirer, the licensee and any interested persons a reasonable opportunity to make representations; and; (b) consider the representations, if any, made under subsection (1)(a).”*
15. Section 5(1) of the FMR Act states in part:
 5. (1) *The Office shall supervise the fuel sector in accordance with its jurisdiction under the Utility Regulation and Competition Act, 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 Act, 2016;*
 [...]
 - (b) *promote fair competition in the fuel sector;*
 [...]

(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.

16. Section 6(2)(o) of the URC Act states that the Office, in performing its functions and exercising its powers under the URC Act or any other Act, may “conduct research and studies into any matter or technology which may be relevant to its functions and publish its findings, if appropriate”.
17. Section 7(1) of the URC Act 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. Draft Determination

18. The Office has drafted its Determination which sets the considerations, analysis and approach the Office has taken to review and make its draft determination to give consent to the acquisition. The Determination is attached as Appendix 1.

D. Consultation Questions

19. Based on the above, the Office invites the relevant parties to whom this consultation has been provided, to submit their comments, with supporting evidence where necessary, on the following questions:

Question 1:

What are your views on the Office’s draft decision to give consent to the transfer of shares and change of control of HGL?

Question 2:

Please provide your views on any other matters you consider relevant to this transaction, including areas the Office should consider in evaluating the application in its draft decision to give consent to the application.

E. How To Respond To This Consultation

20. This consultation is conducted in accordance with the Consultation Procedure Guidelines determined by the Office and found on the Office’s website¹.

¹<https://www.ofreg.ky/upimages/commonfiles/1507893545OF20171DeterminationandConsultationProcedureGuidelines.pdf>



21. The Office considers that because the draft Determination is published as part of this consultation, this consultation will be conducted as a single-phase consultation over a period of twelve (12) days.
22. All submissions on this consultation should be made in writing, and must be received by the Office no later than 5:00 p.m. on 6 July 2022.
23. The Office will post any comments received within the stated deadline on its website by 5:00 p.m. on 14 July 2022.
24. Submissions may be filed as follows:
 - By email to:
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
3rd Floor, Monaco Tower II
11 Dr. Roy's Drive
Grand Cayman
Cayman Islands
25. The Office expects to publish its final determination regarding the acquisition by 30 July 2022.



APPENDIX 1

Draft Determination

The draft determination is attached as an appendix.