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## Consultation: Ofcom's general policy on information gathering

Dear Enforcement Team,

Please find Virgin Media O2's (VMO2) response to the Ofcom consultation on its general policy on information gathering 'the Policy'. VMO2 is happy to discuss any aspect of the response, or provide further information, as Ofcom requires.

Over the course of the last several years, we have observed a substantial increase in the volume and complexity of requests for information issued by Ofcom. For example, in the period January to August 2024, Virgin Media O2 received 142 requests for information, including 76 final notices. Indeed, in the three-month period to the end of August 2024, we submitted a response to 40 final notices – a number that is more than 50% of the total number of final notices received for the entirety of 2022. Moreover, the volume of requests does not provide the full picture. Requests in general appear to be increasing in scale (number of questions/volume of data requested) and complexity.

We acknowledge the necessity of Ofcom properly evidencing its decisions and we take our obligations in respect of the provision of information very seriously. However, we are also mindful of the requirement for Ofcom to act proportionately in the course of carrying out its duties. The unprecedented expansion in the scope and scale of Ofcom's information gathering activities, and the apparently limited willingness to schedule and coordinate requests to avoid bottlenecks is now, in our view, in conflict with this proportionality requirement. We therefore believe that, as a key element of this consultation, Ofcom must review its adherence to the proportionality requirement and put in place safeguards and ongoing monitoring procedures to ensure that the requirement is met.

### The Policy

VMO2 observes that Ofcom's Consultation focusses on expectations on stakeholders and clarifying the Policy through this lens. However, VMO2 considers that it would be appropriate for Ofcom to also

set out certain commitments as to how it will conduct itself to stakeholders. As part of the Policy review, Ofcom should consider several key points, as set out below.

There have been a number of occasions where the turnaround for responses has been unreasonably tight, for example, where the reporting window closes at the end of a month, Providers are then expected to collate the data for the relevant period, undergo governance processes and submit, within a week. As Ofcom is aware, VMO2 introduced a robust governance process in relation to information requests, to ensure as far as possible, the accuracy and completeness of the information submitted to Ofcom. Unreasonably tight timescales for response to information requests creates pressure on this process.

VMO2 has found that Ofcom has been inflexible when considering the feasibility of teams turning requests around in such a tight timescale. VMO2 considers that minimum, reasonable timescales for response should be set out in the Policy, and any shorter timescales should be by exception and agreement only, with a commitment to set out why the particular data/response is required in the shorter timeframe and a commitment to understand from providers the challenges they are facing.

In conjunction with the above, Ofcom should reconsider its position on 9am deadlines. The 9am deadline is, quite frankly, arbitrary and impractical. This is particularly relevant for Monday 9am deadlines. In the case of a submission that has large data files, the upload can take in excess of an hour - and it is not feasible to upload this on a Friday evening as the file will have been automatically deleted by the MFT system by the Monday morning and the process will have to be undertaken all over again, effectively duplicating the work.

VMO2 notes the commitment by Ofcom that it will exercise its powers in a reasonable and proportionate way. A1.15 of the Consultation sets out a range of factors which Ofcom will take into account, when issuing a request. It should be noted that a number of these factors have not historically been considered when issuing information requests. As an example, the recent TAR information requests were lengthy, had unreasonable timescales for response and coincided with multiple other information requests of a same or similar subject matter, which contradicts part (b) of paragraph A1.15. Furthermore, VMO2 observes that the nature and format of the questions were at times repetitive, unclear, and poorly set out, making the task of assigning business owners to responding to the questions additionally complex. Furthermore, given that Ofcom had launched the TAR process in April, we had expected the information requests to be well developed and that duplication of requirements would have been addressed within Ofcom itself. This clearly did not happen. It is important the Information Registry holds Ofcom project teams to similarly high standards of performance to those it expects from CPs.

In respect of record retention and personal data (A.1.68), VMO2 has identified that Ofcom is increasingly requesting the name and job title of those providing and signing off information. It is already a requirement for providers to ensure the appropriate individuals are a) identified for providing information, and b) that the information has undergone the relevant governance processes, to ensure accuracy and completeness. Considering this, is the request for this level of personal data strictly necessary, proportionate and legitimate? If Ofcom believes this to be the case, the reasons for this should be made clear to providers when the request is made.

Information Registry

VMO2 welcomes the principle of the Information Registry team, in particular the vision of having a central conduit for information requests and the coordination on information gathering. However, it appears that in practice the Information Registry team hold little sway in the wider Ofcom organisation. This manifests in a lack of coordination and sequencing, with frequent overlapping of requests requiring input from the same, finite pool of subject matter experts and regular concurrent deadlines.

There is little to no regard by Ofcom as to the volume of requests being issued to providers, or evidence of due consideration being given to timescales for response. Frequently, the requests are similar in nature, and therefore the same teams within VMO2 are responsible for providing information. In particular, the requests routinely land during holiday periods, frustrating the information request process further.

In addition, VMO2 has experienced, on multiple occasions, that individual teams/staff members from Ofcom contact specific staff members within VMO2, circumventing the appropriate channels. This results in communications going to staff members who may have left the business, are on sick/annual leave or are no longer the appropriate point of contact. This is a problem on a number of fronts; bypassing the appropriate channels means that the VMO2 Regulatory team may not have the appropriate oversight of the communication and cannot ensure that the information being provided has had the necessary monitoring or undergone the relevant governance processes. It also means that there is an incomplete view of how many requests are with providers at any one time and the output shared by the Information Registry team is not truly reflective of the volume of requests (whether formal or informal) VMO2 is actually dealing with.

VMO2 has previously requested a 6-12month view from Ofcom (via the Information Registry team) in terms of information requests that are anticipated. This has failed to materialise and leads VMO2 to conclude that Ofcom generally does not have a joined-up, strategic, way of working and does not routinely keep the Information Registry Team abreast of work plans.

### Draft Notices

The benefit of issuing draft notices should not be underestimated by Ofcom. Whilst VMO2 notes that Ofcom are proposing to set out examples of circumstances where it may not issue a draft notice, this should be on a 'by exception' basis, only. Not issuing a draft notice could be a false economy on Ofcom's part. While Ofcom may believe it would speed up the information gathering process, it would more likely end up frustrating the process, as Ofcom would not have advance notice of a provider's position on the availability of information and its ability to respond to an information request.

Draft notices are valuable as they afford providers the opportunity to identify and engage relevant stakeholders in the business ahead of the final notice being received, thus enabling them to plan and make the information gathering process more efficient. Providers are able to establish whether questions are clear, proportionate and feasible, and whether timescales are realistic, and make representations to Ofcom accordingly. Draft notices can also enable Ofcom to refine requests and obtain more value from them – for example, a provider may possess different or more relevant information to that initially requested by Ofcom. Failing to issue a draft notice could also be perceived as a barrier to providers querying why Ofcom actually requires the data that is being requested and the proportionality of the request. It has also been broached with Ofcom, on a number of occasions, about having constructive discussions prior to issuing any sort of notice (draft or final), in order to

understand Ofcom's aim in requesting data and whether there could be a better, more effective, way of achieving the aim. This would surely be a mutually beneficial approach.

There are additional concerns around the use of the volume of data Ofcom requests. Often providers are at a loss to understand how the vast amounts of data have been used and to what end. A clear example of this was the monitoring the effectiveness of End of Contract and Annual Best Tariff Notifications. Large volumes of customer level data were provided, with a very rudimentary summary provided at the conclusion of the exercise.

VMO2 impresses upon Ofcom the importance of considering the points made above, as the process for gathering information is currently unsustainable and requires improvement. We would request that as part of this process, providers' responses are shared within the wider Ofcom organisation and constructive steps are taken to ensure that firstly, the Information Registry team is considered crucial to the information gathering process; and secondly, Ofcom works towards a unified, strategic work plan, that will enable providers to be able to appropriately horizon scan and understand with a degree of clarity when and what information requests are coming down the line, which will enable appropriate resourcing to be in place. We are concerned that Ofcom is under a misapprehension about the capacity larger providers have in dealing with multiple and/or large information requests dealing with similar subject matter at relatively short notice.