



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Publication of ComReg's Access to the File Policy

Response to Consultation 25/16

Response to Consultation

Reference: ComReg 25/44

Date: 7 July 2025

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Contents

Section	Page
1 Introduction	3
2 Overview	3
3 Scope of the Policy	4
4 Material to be disclosed	5
5 Alleged conflicts of interest	7
Appendix 1: Submissions to Consultation	9

1 Introduction

- 1.1 ComReg has today published its finalised Access to the File Policy for the purpose of Part VII of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 ("the 2023 Act"). This follows a consultation on a draft Policy (ComReg Document 25/16 and 25/16a) which ran from 26 March 2025 to 28 April 2025. Submissions were received from three respondents, namely, Eircom Limited trading as Eir and Open eir ("Eircom"), Virgin Media Ireland Limited ("Virgin Media") and ALTO.
- 1.2 The Access to the File Policy, which reflects ComReg's consideration of the Submissions received, has been published separately in ComReg Document 25/45 and applies with immediate effect in respect of investigations by ComReg under the 2023 Act.
- 1.3 ComReg's consideration of the respondents' submissions is set out below; it should be read together with the Policy and the respondents' submissions published in the Appendix to this response to consultation.

2 Overview

- 2.1 All respondents welcomed the opportunity to comment on a draft of the Access to the File Policy. ALTO was supportive of ComReg's approach; Virgin Media prefaced its submissions with comments regarding matters not relevant to the Policy, in respect of the Adjudication process established by the 2023 Act including in particular as regards the independence of adjudicators and the adjudication unit. These comments are noted but have been dealt previously and are not considered further here.
- 2.2 As regards the approach proposed by ComReg for Access to the File, ALTO agreed with the proposed approach and Virgin Media generally agreed with the circumstances in which access to a file will be granted. Eircom made submissions regarding the time at which disclosure is made suggesting disclosure should be made before the NSNC and in case of settlement discussions. Both Eircom and Virgin Media made submissions seeking to extend the scope of the materials to be disclosed. Virgin Media was of the view that the Policy was not as clear as it ought to be and Eircom submitted processes should be in place to deal with conflicts of interest.
- 2.3 The detail of the respondents' submissions is addressed below under the following headings: Scope of the Policy; Material to be disclosed; and Conflicts of interest.

3 Scope of the Policy

- 3.1 The purpose of the Policy is to set out how ComReg will approach disclosure of materials in respect of suspected regulatory breaches pursued under Part VII of the 2023 Act. ALTO noted that this policy had previously existed within ComReg and been a feature of competition law enforcement under Regulation 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. ComReg notes in this regard that the approach set out in the Policy closely follows that of ComReg and the Commission for Competition and Consumer Protection (CCPC) under the competition rules¹ and the European Commission² both in terms of the time at which disclosure is made (when a Statement of Objections, which is a document similar in nature to the notice of suspected non-compliance under the 2023 Act, is issued) and the extent of the disclosure. However, for the avoidance of doubt, this Policy does not substitute that published in respect of investigations under the Competition Act or Regulation 1/2003.
- 3.2 Disclosure is required under the 2023 Act at a time when a notice of suspected non-compliance is served; in particular, the authorised officer is obliged to serve on the notified person a copy of, or access to, any material relied upon for the purpose of issuing the notice of suspected non-compliance. The Policy accordingly sets out how authorised officers of ComReg will discharge this obligation. Eircom proposes that information should be provided at earlier stages of an investigation in order to contribute to the early resolution of investigations thereby avoiding “*waste of resources on all sides*”. Eircom suggests that an approach similar to that set out in the Policy should be adopted at case opening and at settlement stage. In contrast, Virgin Media generally agreed with the circumstances in which access to the file is granted under the Policy including that it is only upon receipt of a notice of suspected non-compliance.
- 3.3 Having considered Eircom's submission, ComReg does not believe that extending the scope of the Policy to stages prior to the notice of suspected non-compliance or in the context of settlement discussions is either possible, nor warranted, or in the public interest. ComReg notes as follows:
- 3.4 First, there is a difference between “information” and “material” which Eircom's submissions do not address - Access to the File is concerned with material, not information generally. Second, at the stage of a case opening, the investigation file is not complete; the purpose of the investigation is precisely to gather the material necessary to enable an authorised officer to determine whether there are reasonable

¹ Access to the File Policy - In respect of investigations by ComReg under the Competition Act 2002, Document Reference: ComReg 23/87, Date: 21 September 2023.

² Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (Text with EEA relevance)

grounds upon which to suspect the occurrence of a regulatory breach or breaches. Any such suspicion is the subject-matter of the notice of suspected non-compliance and such notices are the statutory mechanism under which regulatory breaches are alleged. Prior to that, there is, contrary to what Eircom suggests, no allegation of wrongdoing.

- 3.5 Furthermore, the fact that an operator does not possess all the information that an investigator has does not “*prevent the potential resolution of investigations at an early stage*” and no access to the file is necessary “*to clear things up*”, as Eircom contends. Voluntary, meaningful cooperation will likely facilitate the early conclusion of an investigation, not disclosure of the information and materials that an authorised officer has. In this regard, ComReg is of the view that a requirement to disclose information in the manner that Eircom suggests would undermine ComReg’s ability to conduct investigations into potential non-compliance and hinder to a material extent its ability to discharge its statutory function to ensure compliance.
- 3.6 For the same reasons, there is simply no basis or reason why disclosure ought to be made prior to a settlement. This is recognised in section 68 of the 2023 Act which does not require any further disclosure of material in the context of an adjudication on consent. A settlement under section 62 of the 2023 Act cannot, by definition, be compelled and it is entirely for the operator concerned to determine whether it wishes, based on its knowledge of its affairs and its compliance or otherwise, to seek to settle the matter rather than take the risk of – but also benefit from the safeguards provided for under – the process leading to adjudication under Part VII of the 2023 Act.
- 3.7 ComReg accordingly is satisfied that it would not be appropriate to extend the Policy in the manner suggested by Eircom.

4 Material to be disclosed

- 4.1 Both Eircom and Virgin Media were concerned that the Policy did not provide for sufficient disclosure. Eircom proposed “*provision of information based on discovery rules*”; Virgin Media sought changes to the wording used “*so that it is clearer and stronger*” that not only the material that the authorised officer relies on is disclosed but also material that has not been relied on. Virgin Media made reference to the discovery process and to disclosure in criminal proceedings in support of its view that material that is relevant to an investigation and as such forms part of the file, ought to be disclosed whether or not the authorised officer has relied on such material and this was the case “*most especially when the Notified Person is reasonably likely to seek to rely on such material*”.
- 4.2 Both Eircom and Virgin Media were concerned that access would not be granted to internal documents of ComReg. Eircom submitted this was “*potentially subjective*

and may lead to the withholding of information that would, in the normal course of administration of justice, be discoverable/disclosable". Virgin Media noted that under Irish law, public bodies are not exempt from disclosing internal documents and referred to the duty to disclose under Freedom of Information laws documents relating to a decision by that public body which impacts the person. Both Eircom and Virgin Media suggested that all material should be provided at the outset as this would avoid any requirement to apply to an adjudicator under section 87(1) (Virgin Media) or the High Court (Eircom). Finally, Eircom urged caution in the grant of requests for redaction of information and redactions should not impinged on the rights of defence of the Notified Person.

- 4.3 Having considered Eircom and Virgin Media's submissions, ComReg does not believe that approaching access to the investigation file as if it were a discovery exercise is appropriate. Discovery in civil litigation is always made by reference to specific categories of documents and requires justification for discovery of such categories. In the case of Access to the File, no justification is required on the part of the Notified Person; rather there is an entitlement to being provided, in accordance with fair procedures, with the materials that are part of the investigation file and form the basis for a suspicion of regulatory breach being reached on reasonable grounds.
- 4.4 ComReg in this regard believes that access to the File should extend to all the investigatory material that is obtained, produced and/or assembled by Authorised Officers during the investigation, the disclosure of which is required to facilitate the Notified Person to respond to an NSNC, or otherwise deal with the proceedings provided for under Part 7 of the 2023 Act in a fully informed manner. Disclosure of internal documents of ComReg will not normally fall within such investigatory material and does not constitute evidentiary material - this will also be the case of material that is subject to legal professional privilege. ComReg also notes that Freedom of Information requirements do not extend to an obligation on part of an authorised officer to disclose internal documentation regarding an ongoing investigation.
- 4.5 However, ComReg agrees, in light of Virgin Media's submissions, that there is merit in reviewing the draft Policy to make it clearer. ComReg accordingly has clarified what is contained in the File being provided access to, and how access will be granted, by including a definition of what the File includes, and does not include, and by distinguishing between four categories of documents according to how access is granted.
- 4.6 In particular, the Access to the File Policy has been restructured to increase clarity and readability. Amendments have been made to clarify what is included in the File, namely the File consists of the investigatory material that is obtained, produced and/or assembled by authorised officers during the course of an investigation into a potential regulatory breach or breaches. The Policy then makes it clear that access is only granted to that part of the File disclosure of which is required to facilitate the

Notified Person to respond to an NSNC, or otherwise deal with the proceedings provided for under Part 7 of the 2023 Act in a fully informed manner. In order to ensure clarity as to the treatment of materials, the File is divided into four categories of documents as follows:

- Material relied upon by the authorised officer for the purpose of issuing the notice of suspected non-compliance, or for the purpose of referring the matter to adjudication and exhibited to the notice of suspected non-compliance or the referral report ("**Category A**");
- Material not exhibited to the notice of suspected non-compliance or the referral report which is relevant to the investigation, whether inculpatory or exculpatory, including material obtained from third parties ("**Category B**");
- Material not exhibited to the NSNC or the Referral Report which is in the Notified Person's possession ("**Category C**"); and
- Material in the File, including ComReg's internal documents, that does not fall within any of the above categories ("**Category D**").

4.7 The Policy clearly sets out how each of the Categories is treated for the purpose of access: access is provided to the materials falling within Category A and Category B. No access is granted to Category C material on the basis that Category C material is in the Notified Person's possession although an authorised officer has discretion to make an exception on submission from the Notified Person. Finally, no access is given to Category D. The Policy makes it clear, however, that where an authorised officer finds that Category D materials in fact have evidentiary value, such materials will be included in either Category A or Category B and subject to access accordingly.

4.8 The Access to the File Policy then sets out for Categories A and B, how access will be effected, namely for Category A, by furnishing copies of the exhibits as part of the NSNC or Referral Report and for Category B, by providing access either electronically or in paper form or using a combination of both.

4.9 ComReg notes that although no change has been made to the Policy that affects the materials to which access is provided, the amendments to the documents should bring clarity to their treatment.

4.10 Finally, ComReg is satisfied that the proposed approach to redactions appropriately takes into account the requirement that rights of defence are not impinged upon by redactions of commercially sensitive material.

5 Alleged conflicts of interest

5.1 Eircom notes a supposed "potential for a conflict of interest" which would arise "*if an*

authorised officer responsible for preparing the NSNC, exclusively determines what documents are to be included in the File provided to the operator” and there would be “an incentive to only disclose documents that support the case”. Eircom suggests that there should be a “mechanism for an objective review of such decisions by a non-conflicted person before they are final”.

- 5.2 However there is simply no basis for alleging any conflicts of interest on the part of an authorised officer and an authorised officer does not have “an interest” in an adjudication. The Policy sets out the approach that authorised officers will follow in respect of disclosure and the duty that it is theirs to disclose the materials. This is entirely consistent with fair procedures.

Appendix 1: Submissions to Consultation

Submission to Consultation: ALTO

alto

alternative operators in the communications market

**Access to the File Policy in respect of investigations by ComReg
under the Communications Regulation and Digital Hub
Development Agency (Amendment) Act 2023Ref: 25/16 & 16a**

Submission By ALTO

Date: April 28th 2025

ALTO is pleased to respond to the Consultation: Access to the File Policy in respect of investigations by ComReg under the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023Ref: 25/16 & 25/16a.

ALTO welcomes the opportunity to comment on this important Consultation.

ALTO generally supports the effort and work ComReg has put into this Policy and recognises the import of it in the context of what were previously termed co-competition powers.

ALTO notes that at Part 7 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (the Act) which was commenced on 9 June 2023, and it established *inter alia* a new administrative sanctions regime to deal with “*regulatory breaches*” within the meaning of section 2(1) of the Act.

ALTO also notes that ComReg proposes to adopt a Policy known as “*Access to the File*” which sets out the procedures ComReg intends to follow when providing access to its file in the context of investigations into suspected regulatory breaches. In particular, we note that this policy had previously existed within ComReg and indeed it has been a feature of competition law adjudication and enforcement under Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

ALTO notes that ComReg appears to have built in satisfactory safeguards and data access restrictions into the draft Policy document made available under ComReg Ref. 25/16a. Those safeguards and data access restrictions appear to be both reasonable and sensible.

ALTO

28th April 2025

Submission to Consultation: Eircom Limited

eir's Response to ComReg Consultation & Draft Policy:

**Access to the File Policy – Communications Regulation & Digital
Hub Development Agency (Amendment) Act 2023**

ComReg Document: ComReg 25/16 & ComReg 25/16a



28 April 2025

DOCUMENT CONTROL

Document name	eir response to ComReg Consultation 25/16
Document Owner	eir
Status	Non-Confidential

The comments submitted in response to this consultation document are those of Eircom Limited (trading as 'eir' and 'open eir'), collectively referred to as 'eir Group' or 'eir'.

eir Comments

eir welcomes the opportunity to provide comments on ComReg's draft "Access to the File" Policy (ComReg Document No. 25/16a).

The procedures on Access to the File ('ATF') deal with the provision of information to recipients of a Notice of Suspected Non-Compliance on foot of a ComReg investigation. However, the document does not provide any guidance or procedure for the provision of information to operators at earlier stages of an investigation. In eir's experience, companies will often have to incur very significant time and costs as a result of a ComReg investigation, long before the NSNC stage is reached. It would contribute to more early resolution of investigations, and thereby avoid waste of resources on all sides, if ComReg undertook to provide more information to companies under investigation in a structured way, such as that envisaged by the ATF document, at an earlier stage in the investigation. In particular:

(a) Information disclosure at case opening. Sharing of documents indicating the specific factual breach being investigated and the basis for the opening of the investigation (e.g. own initiative, or based on a specific complaint). When a compliance investigation is opened, authorised officers may decline to disclose what specifically an operator is alleged to have done and may also refuse to disclose whether it is an own initiative investigation, or is rooted in a complaint from a customer or a competitor. Withholding information until the NSNC has the effect of preventing the potential resolution of investigations at an early stage. If operators were provided with full details of the nature of complaints made, or suspicions held, it may in many cases be possible to clear things up e.g. if they are based on a factual misunderstanding, or if the complaint is tactical in nature by a competitor seeking e.g. to delay a product launch, rather than based on a substantive non-compliance.

Public sector bodies have a positive duty to avoid imposing unnecessary costs and procedures on the companies they regulate. Excessive regulatory process costs also ultimately impact on prices for end-users.

Unnecessarily prolonging compliance investigations imposes a very significant cost on the entity being investigated, even if it is ultimately discontinued or does not lead to an NSNC. For example, in recent cases, ComReg investigators have taken over a million documents from eir, while declining to outline any specific alleged breaches. They have also sought to interview employees. In such cases, having to manage such large scale document processing requires the use of specialist platforms simply to provide ComReg with the requested information. This imposes very significant costs on an operator at a very preliminary stage,

even before specific wrongdoing is alleged. Similarly, there is significant cost and effort involved in preparing for interview, and providing legal representation for the affected employees. Given this, eir suggests a more structured approach to the disclosure of relevant information at an earlier stage is required (i.e. before the NSNC). This might allow for an earlier resolution and thus avoid wasted costs in responding to very large data requests and dealing with interviews of staff.

(b) Disclosure of information at settlement stage. eir further notes that the ATF document does not address the requirement to disclose relevant information where ComReg proposes to enter into the settlement of an investigation under Section 62, after opening an investigation but prior to issuing an NSNC. This could lead to a situation where ComReg has information that it would be required to disclose after an NSNC, which might, for example, exonerate the operator, or reduce the level of any administrative sanction. There would appear to be no obligation under this document, for ComReg to disclose this information when proposing a settlement under Section 62. There should be a requirement for ComReg to disclose information relevant to the validity of allegations made against the operator, prior to any settlement under Section 62.

Criteria for the disclosure of documents

eir suggests that ComReg adopt a simplified criterion for the disclosure of information, namely that it is information that would be discoverable, during litigation. This would assist ComReg's legal advisers in assessing in individual cases whether a document is disclosable, given that there is a significant body of case-law and academic guidance on what documents are discoverable. As things stand the proposed criterion of withholding information that is 'internal' to ComReg, is potentially subjective and may lead to the withholding of information that would, in the normal course of administration of justice, be discoverable/disclosable. Provision of information based on discovery rules would also mean that in the event of a High Court challenge, there would not need to be a further, duplicative discovery review process.

eir further notes the potential for a conflict of interest, if an authorised officer responsible for preparing the NSNC, exclusively determines what documents are to be included in the File provided to the operator. Having prepared the case in the NSNC, this could create an incentive to only disclose documents that support that case. Therefore there needs to be a mechanism for an objective review of such decisions by a non-conflicted person before they are final.

Redaction of documents

As noted above, eir is aware that in any regulated market, competitors may use the regulatory framework to make tactical complaints in part for commercial reasons. They may, for example, seek to trigger regulatory investigations in the hope e.g. that it might then delay a product launch, or prevent competition on new price or product features. It is important therefore to exercise appropriate caution in granting requests for redaction of information. Such redactions should not extend to the point that it inhibits the rights of defence of the company being investigated, or, as noted above, prevents an early resolution by withholding relevant information. Ordinary principles relating to the administration of justice, and rights of defence, continue to apply. eir agrees that rather than withholding relevant information altogether, it can be provided by making use of appropriate confidentiality undertakings, or confidentiality rings. As above, given the potential for a conflict of interest for an authorised officer, final decisions on redactions, or challenges to redactions should be made by a non-conflicted person, and should be capable of appeal.

Submission to Consultation: Virgin Media Ireland Limited



Virgin Media response to:

ComReg Consultation on Access to the File Policy in respect of investigations under the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 - ComReg Reference 25/16, published 26 March 2025.

28 April 2025

Non-Confidential

Introduction

Virgin Media Ireland Limited (“**Virgin Media**”) welcomes the opportunity to respond to the Consultation published by the Commission for Communications Regulation (“**ComReg**”) on 26 March 2025 titled – ‘Access to the File Policy in respect of investigations under the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023’ (ComReg Doc 25/16) (“**the Consultation**”). Capitalised terms in this response have the same meanings as in the Consultation. No part of this response is confidential.

The draft ‘Access to the File Policy’ (“**the Policy**”) sets out the procedures ComReg intends to follow when providing access to its File, in the context of Investigations of suspected “regulatory breaches” conducted under Part 7 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (“**the Act**”). The draft Policy describes a File as consisting of material relied upon by an Authorised Officer for the purpose of:

- issuing a notice of suspected non-compliance (“**NSNC**”) under section 63 of the Act;
- preparing a Referral Report under section 70 of the Act; or
- referring a matter to an adjudicator under section 69(b) of the Act.

The draft Policy further states that a File may contain additional evidence or material as described in Section 3 of the draft Policy.

Virgin Media’s comments on the draft Policy are set out below.

Independence

Virgin Media, at the outset, would note that it maintains its view, as set out in its response to Consultation 24/14 submitted in March 2024, that the independence of the Adjudication Process needs to be stronger and clearer, to underpin stakeholder faith in the process. Virgin Media, in its previous response, expressed concern that the Adjudication Process is not, at this stage, sufficiently independent and this lack of independence suggests deference to the position of ComReg, the regulator, contrary to civil law standards where the legal burden rests with the applicant to prove its case on the balance of probabilities. Virgin Media remains of the view that ComReg can, and should, clearly codify the requirements relating to the independence of the Adjudication Process and that the Adjudication Unit should be separate from and entirely independent of ComReg.

Access to the File

Virgin Media generally agrees with the circumstances in which access to a File will be granted, as described in section 2 of the draft Policy, though subject to the comments set out below. It is noted that access to a File will be granted to a Notified Person only upon receipt of an NSNC by that Notified Person and that employees, legal advisers and professional advisers shall also be entitled to the same access, where they act on behalf of the Notified Person in the context of an Investigation.

Paragraph 1.6 of the draft Policy states that a Referral Report will be provided to a Notified Person, in accordance with section 71(2)(a) of the Act, and the Authorised Officer will provide the Notified Person with “a copy of, or access to, any material not already provided that has been relied upon for the purpose of the referral”, as required under section 71(2)(b) of the Act.

Virgin Media would note the duty to also provide a Notified Person with any material that has *not* been relied upon by an Authorised Officer but that is nevertheless relevant and that the Notified Person may reasonably seek to rely upon. All litigation in Ireland is subject to principles of natural justice and due process. In criminal cases, the doctrine of disclosure requires the prosecution to provide to the defence not only the evidence upon which the prosecution intends to rely but also any material that may assist the defence, including exculpatory evidence. Under the equivalent discovery process in civil proceedings,¹ a respondent is entitled to seek documents from the applicant that may support the respondent’s case, even if those documents are not relied upon by the applicant.

The same duty of disclosure applies to any Adjudication Process conducted under the Act and Virgin Media submits that the Policy ought to make this explicit throughout. For example, paragraph 1.2 of the draft Policy states as follows:

The File the subject matter of this Policy document is that consisting of any and all material that will have been relied upon by the Authorised Officer for the purpose of issuing a notice of suspected non-compliance under section 63 of the Act (an NSNC), preparing a report under section 70 of the Act (a Referral Report), or referring a matter to an adjudicator pursuant to section 69(b) of the Act. The File also comprises the additional evidence or material as described in Section 3 below. (Emphasis added).

Virgin Media submits that the above wording does not sufficiently address the rights of a Notified Person. The Policy should very clearly state that if an Authorised Officer possesses material that is not relied upon by the Authorised Officer but that is relevant to the Investigation, then such material shall form part of the File and shall be disclosed to the Notified Person, most especially when the Notified Person is reasonably likely to seek to rely on such material.

Virgin Media acknowledges that the principles relating to discovery and disclosure, as outlined above, are addressed to some extent in paragraph 1.11 of the draft Policy. Paragraph 1.1 states that “Access will also be granted to additional evidence not referred to in the NSNC or Referral Report, where the provision of such evidence is considered necessary in order that the Notified Persons have the opportunity to respond to an NSNC or to otherwise deal with the proceedings provided for under Part 7 of the Act in a fully informed manner.” However, the wording needs to be clearer and stronger. The Policy should explicitly state that if an Authorised Officer has material that is relevant to the Notified Person then such material shall form part of the File, even if the Authorised Officer does not rely upon it.

¹ Order 31 of the Rules of the Superior Courts - Interrogatories, Discovery and Inspection

Paragraph 1.12 of the draft Policy is also too sweeping in its assertion that access *“will not generally be granted to documents internal to ComReg, its staff or Authorised Officers.”* Under Irish law, public bodies are not exempt from having to disclose internal documents that relate to enforcement actions; quite the opposite, in fact. For example, under Freedom of Information laws a public body has a duty to disclose to any person, upon request, all documents relating to a decision by that public body which impacts the person. This duty includes internal documents subject to narrowly applied exceptions like legal professional privilege. Paragraph 1.12 states that *“Access will not generally be granted to documents ... over which a claim of privilege might reasonably be made.”* A claim of privilege can reasonably be made only where it is legal professional privilege; and even then, there may be overriding public policy considerations. Virgin Media submits that paragraph 1.12 ought to be amended to reflect the rights and entitlements of a notified person, which may supersede those of ComReg.

Virgin Media further notes that the section of the draft Policy headed “Limitations of Access” (paragraphs 1.15 – 1.19 inclusive) does allude to an Authorised Officer providing material to a Notified Person other than material on which the Authorised Officer seeks to rely. Paragraph 1.17 states as follows: *“It is also to be presumed that Authorised Officers will not accede to requests [by third parties] to redact information tending to prove or disprove the commission of a suspected regulatory breach.”* (Emphasis added). Virgin Media supports this approach by ComReg. Subject to the specific facts of any case, if information tends, or may tend, to disprove the commission of a suspected or alleged regulatory breach then the right of a Notified Person to access such information would strongly outweigh the opposing interest of any third-party objecting to its release. Virgin Media submits that the entire Policy should be amended to reflect the principle that is correctly captured in paragraph 1.17.

Virgin Media notes that the draft Policy applies only to material provided to a Notified Person by an Authorised Officer, pursuant to section 71(2)(b) of the Act. Under section 87(1) of the Act, an adjudicator may direct an Authorised Officer to answer any question, to produce books, documents and records in its power or control, and to clarify any issue of fact. Therefore, in circumstances where an Authorised Officer has not included certain material in a File or has otherwise refused or failed to provide material to a Notified Person, the Notified Person may apply to an adjudicator for access to such material. Despite this provision, Virgin Media submits that it would be in the best interests of all parties – ComReg, the Notified Person, and the adjudicator – for all relevant information to be provided at the outset by including it in the File.

Finally, Virgin Media notes the following statement in paragraph 1.4 of the draft Policy: *“where ... there is a conflict between any provision of this document and any other such guidelines or procedures, this document is to take precedence.”* Virgin Media would make the overall point that where a person is protected by certain rights that are established under Irish law, whether through legislation or judicial precedent or in some other manner, then those same rights shall apply in full to any Notified Person who is subject to an Adjudication Process. That being the case, situations may arise in which the final version of ComReg’s Policy on access to the File will not take precedence.

- End -