

MobileOne Ltd



28 August 2009

DID: 6895 1626

FAX: 6899 3929

Mr Andrew Haire
Deputy Director General (Telecoms & Post)
Infocomm Development Authority of Singapore
8 Temasek Boulevard
#14-00 Suntec Tower 3
Singapore 038988
Fax: +65 6211 2116

Dear Mr Haire,

**MI'S RESPONSE TO IDA'S CONSULTATION PAPER ON THE PROPOSED MODEL
CONFIDENTIALITY AGREEMENT ("MCA") FOR THE PROVISION OF SERVICES
ON THE NEXT GENERATION NATIONAL BROADBAND NETWORK -
OPERATING COMPANY**

Attached is M1's response to IDA's consultation dated 18 August 2009 on the above. A soft copy of the paper has also been sent via e-mail.

Please do not hesitate to contact us if you require any clarification on the attached or any further input.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chen Sin Yee'.

Chen Sin Yee (Ms)
Assistant General Manager
Corporate Development

10 International
Business Park
Singapore 609928
Tel: 68951111
Reg. No. 199206031v

ANNEX 1: M1'S COMMENTS ON IDA'S CONSULTATION ON THE PROPOSED MODEL CONFIDENTIALITY AGREEMENT FOR THE PROVISION OF SERVICES ON THE NEXT GENERATION NATIONAL BROADBAND NETWORK – OPERATING COMPANY

Reference	Description	Comments
Recital A, Clauses 1, 4, 6 and 8(a)	Definition of “Proposed Transaction” and the scope of the purpose for which Confidential Information may be used.	<p>We note that (1) the MCA here is expressed by Nucleus Connect to be for the purpose of the “Proposed Transaction”, which is defined as “the proposed provision of services by Nucleus Connect under the interconnection offer . . . submitted by Nucleus Connect to IDA and approved by IDA . . .”; and (2) such definition is broader than and contrasts with the stated purpose of the MCA for OpenNet, which has been expressed to be for “the negotiation and execution of a Customised Agreement between the Parties.” (See the corresponding provisions of the OpenNet MCA.)</p> <p>We respectfully submit that Nucleus Connect’s broader treatment of the issue appears sound -- assuming that Confidential Information is also to be disclosed in the negotiation of an ICO Agreement, rather than only in the negotiation of a Customised Agreement. (Where there is no Confidential Information to be disclosed in the negotiation of an ICO Agreement, the imposition of confidentiality obligations on both Parties would not prejudice either Party, in any event.)</p> <p>However, we are mindful of the fact that the foregoing may differ from paragraph 2(d) of IDA’s 17 March 2009 Explanatory Memorandum in respect of the OpenNet MCA.</p> <p>Regardless of the position to be taken, we are of the view that both the OpenNet MCA and the Nucleus Connect MCA should be consistent on this issue, absent any differentiating factors.</p>
Clause 2	“ Confidential Information ” shall mean information, know-how, ideas, concepts, technology, manufacturing processes, industrial, marketing and commercial knowledge of a confidential nature and includes but is not limited to, information	<p>The syntax of the deleted portion may be erroneous.</p> <p>We thus propose the tracked revision, for clarity.</p>

	<p>of a commercial, technical or financial nature which contains amongst other matters, trade secrets, know-how, patent and ancillary information and other proprietary or confidential information, regardless of form, format, media including without limitation written, oral, or reduced to tangible product, and whether written, oral, reduced to tangible product or otherwise, and also includes those communicated or obtained through meetings, documents, correspondence or inspection of tangible items, facilities or inspection at any site or place including without limitation”</p>	
Clause 9	<p>“The Receiving Party may disclose some or all of the Confidential Information to the Authorised Person(s) provided that prior to a disclosure under clause 8(b) and 8(c), the Receiving Party must inform the Authorised Person(s) that he is obligated to protect the Disclosing Party’s Confidential Information in a manner consistent with this Agreement and shall take reasonable steps to ensure that the Authorised Person(s) safeguards the Confidential Information. In any event, the Receiving Party shall remain liable for any disclosure by the Authorised Person(s) to any other person.”</p>	<p>It is unclear as to why the obligation to inform the Authorised Person(s) of confidentiality obligation and the obligation to ensure that Authorised Person(s) safeguards the Confidential Information are expressed in a limited manner in respect of Clauses 8(b) and 8(c), and not Clauses 8(a) and 8(d). The limited expression seems to imply that the two obligations would not be applicable in the contexts of Clauses 8(a) and 8(d).</p> <p>We are of the view that such implication may be contrary to the intent of the MCA. (We note, however, the adverse impact of such implication may be immaterial, since the last sentence of Clause 9 makes clear that in any event the Receiving Party shall remain liable for any disclosure by the Authorised Person(s) to any other person.)</p>
Clause 13	<p>“Except as otherwise provided in this Agreement, a Receiving Party may not disclose the Confidential Information of the Disclosing Party <u>except to the extent required</u> in the following circumstances”</p>	<p>We propose the tracked insertion, so as to make clear that the disclosure is not to be more extensive than is required.</p>
Clauses 22, 23, 24, 29	<p>Miscellaneous</p>	<p>The references to “parties” or “party” in these clauses (or elsewhere in the MCA, if any), should -- where appropriate -- be replaced by references to “Parties” or “Party”, for consistency.</p>