



POWERING A CONNECTED ASIA
ASIA NETCOM AND PACIFIC INTERNET
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Infocomm Development Authority of Singapore
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Singapore 038988

ATTN: Mr. Andrew Haire
Assistant Director-General (Telecoms)

Fax No 6211-2116

Dear Andrew,

**Pacnet Response to IDA Consultation on Proposed Model Confidentiality Agreement for
the provision of Services on the Next Generation Nationwide Broadband Network –
Operating Company**

Pacnet is pleased to respond to the IDA's consultation dated 18 August 2009 on the above mentioned subject.

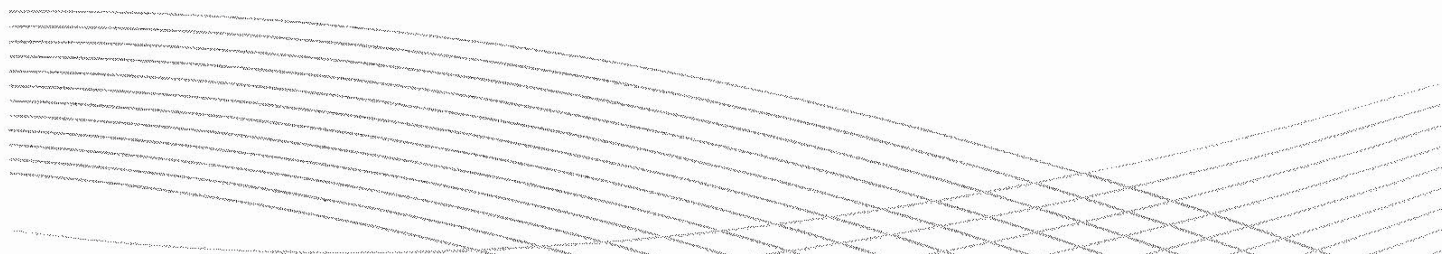
1. Statement of Interest.

Pacnet Internet (S) Ltd currently holds a Service Based Operators Licence in Singapore and operates as a Retail Service Provider (RSP). In this capacity it will be buying active infrastructure services from Nucleus Connect, the Operating Company (OpCo). It is also likely that Pacnet will also be supplying Nucleus Connect with confidential information when negotiating for the provision of these services.

2. Summary of Pacnet's Position and General Comments.

Pacnet is supportive of the IDA in its attempt to arrive at a common Confidentiality Agreement for companies dealing with Nucleus. This is particularly important as a major player in the Nucleus consortium is also a player in the RSP space, so it is very important to achieve what the IDA says in its paragraph 4, that the agreement "contains the necessary provisions to protect and govern the preservation of commercially sensitive information".

This provision is given even greater weight by the fact it is envisaged that a Receiving Party may need to disclose such confidential information to a related corporation for the purposes of facilitating a potential agreement. The main thrust of our response therefore deals with this specific issue.





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3. Specific Provisions of the MDA.

Further to our comments above Pacnet is concerned that in potential negotiations with Nucleus Connect information may be required to be passed to a related company to facilitate the transaction. As this related company is likely to be a competitor to Pacnet it is necessary to define very clearly to whom such information may be given in the related company and the likely sanctions if such information disclosed. The clause dealing with this issue is clause 10 and Pacnet respectfully submits additional language to this clause that it feels meets its concerns "A Receiving Party may only disclose Confidential Information to Relevant Employees of a Related Corporation to the extent necessary to facilitate discussions on the Proposed Transaction, subject to (i) the Related Corporation and the Relevant Employees undertaking to comply with obligations equivalent to those contained in this Agreement and (ii) the Receiving Party and Related Corporation undertaking to be jointly and severally liable for any breach of the confidentiality undertaking by the Relevant Employee".

With regard to clause 17 Pacnet agrees that a breach of this agreement may cause irreparable damage for which monetary damages would not be an adequate remedy. For this reason Pacnet submits that the wording in the agreement "that a Party may seek injunctive relief against such a breach or threatened breach" leaves the process too vague and potentially time consuming. Pacnet therefore proposes to change the word "seek" to "obtain". The last sentence would therefore read "Accordingly, in addition to other remedies that may be available, a Party may obtain injunctive relief against such a breach or threatened breach".

With regards to Clause 20, Pacnet submits that information can remain sensitive for longer than 2 years, as for instance it is unlikely that the traffic profile will change substantially. Pacnet therefore propose to extend the period of confidentiality to 5 years.

Please contact Simon Smith, Acting Director Regulatory if you require any clarifications of any of the points made in this submission.

Yours Sincerely

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