



Access undertaking for digital radio multiplex transmission services in the Gold Coast

Consultation and position paper

November 2021

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List of abbreviations and acronyms

ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
ACT	Australian Competition Tribunal
Broadcasting Services Act	<i>Broadcasting Services Act 1992</i>
CCA	<i>Competition and Consumer Act 2010 (CCA</i>
Decision-Making Criteria	<i>Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2018</i>
DRM	Dispute resolution mechanism
DRMT	Digital Radio Multiplex Transmitter
JVC	Joint Venture Company
Procedural Rules	<i>Digital Radio Multiplex Transmitter Licence Procedural Rules 2018</i>
The Act	<i>Radiocommunications Act 1992</i>
WACC	Weighted Average Cost of Capital

1. Introduction

On 3 November 2021 the ACCC received an access undertaking in relation to the commencement of Digital Radio services in the Gold Coast, Queensland. The proposed undertaking was submitted by Digital Radio Broadcasting Gold Coast Pty Ltd, the Digital Radio Multiplex Transmitter (DRMT) Licensee for The Gold Coast.¹

The ACCC administers the access regime for the digital radio access service under Division 4B of Part 3.3 of the *Radiocommunications Act 1992* (the Act). The access regime allows broadcasters to receive access to DRMT services at reasonable terms and conditions. Under the Act, the ACCC is responsible for implementing and enforcing the access regime.

Digital radio services² commenced in Adelaide, Brisbane, Melbourne, Perth and Sydney in July 2009 after the ACCC accepted an undertaking relating to eight DRMT licenses from five joint venture companies (JVCs) in April 2009. The JVCs represent commercial and community broadcasters and are responsible for multiplexing together the separate streams of content from individual broadcasters and transmitting a combined stream to end users in each licence area.³ The ACCC accepted access undertakings for Canberra, Darwin and Hobart in March 2019 and for Mandurah in November 2019. Other than Mandurah, the areas serviced by digital radio have multiple access seekers from both the commercial and community radio sectors.

Section 118ND of the Act provides that a DRMT Licensee must, within fifty days after the issue of the licence from the Australian Communications and Media Authority (ACMA), give the ACCC a written access undertaking specifying the terms and conditions on which it will provide access to broadcasters. A “Digital radio start-up day”⁴ may be declared only after an access undertaking under Division 4B of Part 3.3 of the Act is in force.⁵

This consultation and position paper seeks stakeholders’ views on the degree to which the access undertaking for the Gold Coast meets the legislative requirements, and pursuant to those, the decision-making criteria developed by the ACCC. These views will be used to inform the ACCC’s decision on whether to accept or reject the undertaking.

Section four of this paper provides a summary of the key features of the proposed access undertaking for the Gold Coast. Detailed information about the undertaking is available in the supporting submission (and proposed access undertaking and access agreement) submitted by Digital Radio Broadcasting Gold Coast Pty Ltd and available on the ACCC’s [website](#).

¹ The relevant licence for this access undertaking is the “Broadcasting – Foundation Category 1 DRMT Licence” issued by the Australian Communications and Media Authority to Digital Radio Broadcasting Gold Coast Pty Ltd on 17/09/2021. This is referred to as the DRMT Licence throughout the paper.

² Digital radio provides for a more efficient use of radiofrequency spectrum, as well as potentially offering better sound quality, reduced interference, the ability to pause or rewind, the provision of still images, and data services such as news, traffic and weather updates.

³ Sub-section 102C(5) of the *Radiocommunications Act 1992* states that for a company to be an eligible joint venture company, the promoters of the company must initially invite commercial licensees and community broadcasting representative company. The incumbent digital commercial radio broadcasting licensees who accepted the invitation would be issued with an equal number of shares. Also, assuming that the invitation were to be accepted by each invitee – the commercial radio broadcasting licensees would hold seven-ninths of the shares and the community radio broadcasting representative would hold two-ninths of the shares. However, the community broadcasters have not elected to become licensees or join a JVC.

⁴ Section 8AC(1) of the *Broadcasting Services Act 1992* provides that the ACMA may, by writing, declare a specified day to be the **digital radio start-up day** for the licence area.

⁵ See section 8AC(1)(d) of the *Broadcasting Services Act 1992*. Also see Appendix A for Key Statutory Licensing Steps for Digital Radio services in Australia.

ACCC preliminary position

The proposed access undertaking for the Gold Coast is substantially similar to the previous undertakings accepted by the ACCC for access to DRMT services in capital and regional cities. Our initial assessment is that the proposed undertaking meets the criteria in the *Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2018*.⁶ The ACCC is required to have regard to the criteria, discussed in more detail in section three of this paper, when considering whether to accept access undertakings for DRMT services.

We consider that the undertaking for the Gold Coast contains provisions to ensure reasonable access to DRMT services for community broadcasters and commercial broadcasters as required under the digital radio access regime.

The ACCC's preliminary position is that the undertaking is fit for purpose and should be accepted in its current form, subject to the outcomes of this consultation.

As the access undertaking submitted for the Gold Coast is substantially similar to the previous undertakings accepted by the ACCC for DRMT services, for which no major issues have arisen in consultation on these undertakings and their operation, we intend to conduct an expedited assessment of this undertaking.⁷

Attachment A provides a list of questions for stakeholders to respond to regarding the Decision-Making Criteria. In addition to the six matters listed above, the ACCC is seeking views on whether there any other matters which the ACCC should consider in relation to its assessment of the undertaking.

In the absence of any significant new issues arising through this consultation, the ACCC will progress straight to a final decision after considering submissions to this consultation and position paper.

⁶ <https://www.accc.gov.au/regulated-infrastructure/communications/broadcasting-content/digital-radio-services..>

⁷ This approach is consistent with the ACCC assessment process outlined in the Explanatory Statement to the Procedural Rules 2018, which states, "it may be appropriate to have an expedited process if an access undertaking or a variation of an access undertaking is substantially similar to a previous access undertaking or a variation of an access undertaking accepted by the ACCC".

2. Timeline and assessment process

2.1. Purpose and consultation approach

The ACCC will adopt a process for assessing the undertaking in accordance with Division 4B of Part 3.3 of the *Radiocommunications Act 1992* (the Act), the *Digital Radio Multiplex Transmitter Licence Procedural Rules 2018* (the Procedural Rules) and the *Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2018* (the Decision-Making Criteria).

If the ACCC considers that the undertaking cannot be accepted in its current form, we will either:

- give the DRMT Licensee a written notice advising that it will accept the undertaking if the DRMT Licensee makes such alterations to the undertaking as are specified in the notice, or
- make a determination and give the DRMT Licensee a written notice advising that an undertaking in the terms specified in the determination is the access undertaking in relation to the licence.

The ACCC's decision to accept or reject an undertaking can be subject to review by the Australian Competition Tribunal (ACT). The ACT's decision must be made within six months of receiving the application for review but can be extended by a further three months.

The ACCC considers that the undertaking submitted for the Gold Coast is substantially similar to the previous undertakings accepted by the ACCC for DRMT services for which no major issues have arisen. Therefore, as noted above we intend to conduct an expedited assessment of this undertaking.

To that end, the ACCC's position is that the undertaking should be accepted in its current form, subject to the outcomes of consultation. The ACCC will hold a four-week consultation period for submissions.

2.2. Making a submission

The ACCC encourages industry participants, other stakeholders and the public more generally to consider and make submissions on the issues set out in this consultation and position paper.

To foster an informed and consultative process, all submissions will be considered as public submissions and will be posted on the ACCC's website. Interested parties wishing to submit commercial-in-confidence material to the ACCC should submit both a public and a commercial-in-confidence version of their submission. The public version of the submission should clearly identify the commercial-in-confidence material by replacing the confidential material with an appropriate symbol or 'c-i-c'. 'Blacked out' text is not preferred.

The ACCC expects that claims for commercial in confidence status of information by parties will be limited in nature in order to allow widest possible participation in the public inquiry.

"The ACCC-AER Information Policy" sets out the general policy of the ACCC and the Australian Energy Regulator on the collection, use and disclosure of information. A copy of the guideline can be downloaded from the ACCC's website:

<https://www.accc.gov.au/publications/accc-aer-information-policy-collection-and-disclosure-of-information>

The ACCC prefers to receive submissions in electronic form, either in PDF or Microsoft Word format which allows the submission text to be searched.

Please email digitalradio@acc.gov.au regarding any questions you have concerning this consultation.

Submissions are due by **COB 15 December 2021**.

Please email submissions to: digitalradio@acc.gov.au

3. Legislative framework for digital radio

The legislative framework for the provision of digital radio services was introduced by the Australian Government in 2007 through the *Broadcasting Legislation Amendment (Digital Radio) Act 2007*. This Act amended the *Radiocommunications Act 1992* (the Act), *Broadcasting Services Act 1992* (the Broadcasting Services Act) and the *Competition and Consumer Act 2010* (CCA – then known as the *Trade Practices Act 1974*).

Digital radio was designed to be introduced in stages, commencing first in metropolitan areas, where new services were considered most likely to be commercially viable. The technology currently being used to provide digital radio services in Australia is an advanced form of Digital Audio Broadcasting (DAB) technology known as DAB+.

Digital radio services commenced in Adelaide, Brisbane, Melbourne, Perth and Sydney in July 2009 after the ACCC accepted an access undertaking in April 2009. The ACCC accepted access undertakings for Canberra, Darwin and Hobart in March 2019 and for Mandurah in November 2019.

Digital radio services are intended to operate alongside, rather than replace, existing analog (AM and FM) radio services. This is a different approach from that taken for digital television. There are currently no plans to switch off analog radio services, nor is there any requirement to simulcast both analog and digital radio services.

The Act does not specify the basis on which the ACCC is required to make its decision to accept or reject an undertaking, but it does enable the ACCC to determine relevant decision-making criteria.⁸

In May 2018, the ACCC published the Decision-Making Criteria and the Procedural Rules.⁹ The Decision-Making Criteria sets out the criteria that the ACCC is to apply in determining whether to accept an undertaking. The Procedural Rules deal with matters such as the form in which the documents must be provided, time limits for the provision of certain information and confidentiality.

Division 4B of Part 3.3 of the Act sets out an access regime for the DRMT Licenses. The access regime, which is administered by the ACCC is designed to ensure that eligible broadcasters have access to the multiplex transmission service on reasonable terms and conditions.

The access regime is discussed in further detail below.

General requirements

The Act sets out a range of requirements and procedures, including:

- A DRMT Licensee must, within 50 days after the issue of the licence, give the ACCC a written access undertaking (section 118ND).
- The ACCC may request the DRMT Licensee to provide further information about the access undertaking once the initial access undertaking is lodged with the ACCC, which must be provided within 14 days from the date of the request (Section 118NE and the Procedural Rules).

⁸ Section 118NJ of the Radiocommunications Act.

⁹ <https://www.accc.gov.au/regulated-infrastructure/communications/broadcasting-content/digital-radio-services..>

- The undertaking comes into force at the time it is accepted by the ACCC and remains in force for the duration of the licence and remains in force if the undertaking is varied or a licence is renewed (section 118NG).
- The ACCC must maintain a register of the undertakings (section 118NK).
- DRMT Licensees must, within 60 days after the end of the financial year, provide an annual report to the ACCC in relation to matters specified in the procedural rules and in compliance with the relevant access obligations (section 118PN).
- Enforcement arrangements, including that the ACCC or a person affected may apply to the Federal Court for orders (sections 118P and 118NZ). The ACCC can also apply for injunctions or interim injunctions (sections 118PI and 118PJ).
- A person whose interests are affected by specified decisions by the ACCC relating to this undertaking may apply within 21 days to the Australian Competition Tribunal (ACT) for a review of that decision (section 118PE).

ACCC procedural rules and decision-making criteria

Procedural Rules

Section 118PO of the Act provides for the ACCC to make rules making provision for, or in relation to, the practice and procedure to be followed by the ACCC in performing functions under Division 4B of Part 3.3 of the Act. The ACCC made these Procedural Rules on 23 May 2018. The rules provide details regarding matters such as the format of documents to be given to the ACCC, ACCC's requests for further information, the treatment of confidentiality claims over information, and matters to be included in annual reports provided under section 118PN of the Act.

Decision-making criteria

Section 118 NJ of the Act provides that the ACCC may by legislative instrument, determine criteria to be applied by the ACCC in deciding whether to accept access undertakings. The ACCC made decision-making Criteria on 23 May 2018. The ACCC must apply the criteria and have regard to other relevant matters when deciding to accept an access undertaking or a variation of an access undertaking. These are set out in more detail in Part 3.2 below.

ACCC to accept or reject an access undertaking

Section 118NF of the Act provides that the ACCC must accept or reject an access undertaking once a DRMT Licensee gives an access undertaking to the ACCC.

Before accepting the access undertaking, the ACCC must publish a copy of the access undertaking on the ACCC's website and invite members of the public to make submissions to the ACCC about the access undertaking within a specified period. The ACCC must consider any submissions received within this period.

If the ACCC rejects the access undertaking, the ACCC may give the DRMT Licensee a written notice advising that if certain alterations are made to the undertaking and submitted within a specified period of time allowed in the Procedural Rules, the ACCC will accept the altered access undertaking.

Otherwise, the ACCC may make a determination specifying certain terms and conditions of access and give a written notice to the DRMT Licensee that an undertaking in the terms specified in the determination is the access undertaking in relation to the licence. However, before giving this notice, the ACCC must publish a copy of the notice on the ACCC's website

and invite members of the public to make submissions to the ACCC about the notice within a specified period and consider any submissions it receives.

If the ACCC accepts the access undertaking, the ACCC must give the DRMT Licensee a written notice stating that the access undertaking has been accepted.

Section 8AC of the *Broadcasting Services Act 1992* provides that the ACCC must accept the access undertaking before ACMA can declare a digital radio start-up day for the licence area.

If the ACCC rejects the access undertaking, it must give the DRMT Licensee a written notice setting out the reasons for the rejection.

Access obligations

Section 118NL of the Act sets out the standard access obligations and section 118NM sets out the excess-capacity access obligations. Both sections provide that DRMT Licensees must provide access to specified fractions of multiplex capacity that satisfy the entitlements, standard access entitlements or excess-capacity access entitlements, of particular content service providers. DRMT Licensees must also provide access to services that facilitate the use of that fraction of multiplex capacity for the purpose of providing content services.

DRMT Licensees must not discriminate between access seekers on the basis of:

- the technical and operational quality of the services supplied to the access seekers; and
- the technical and operational quality and timing of the fault detection, handling and rectification supplied to the access seekers.¹⁰

Standard access entitlements and excess-capacity entitlements

Content service providers can have standard access entitlements and excess-capacity access entitlements.

Sections 118NQ and 118NR of the Act set out standard access entitlements for incumbent commercial and community broadcasters. Each incumbent commercial broadcaster has a standard access entitlement equal to one-ninth of the total transmission capacity under the licence. Community broadcasters share a total of two-ninths of total transmission capacity under the licence via the community broadcasting representative company.

Standard access entitlements for both commercial broadcasters and community broadcasters cannot be transferred to other broadcasters.¹¹ However, different community broadcasters can be nominated by the community broadcaster representative company to use these access entitlements.

Excess-capacity access entitlements are set out in section 118NT of the Act.

Capacity cap

Section 118NV of the Act sets out the capacity cap for commercial broadcasters. In the licence areas where there is only one category 1 multiplex, a commercial broadcaster is not entitled to more than two-ninths of the total transmission capacity available under the licence. Where there are two category 1 multiplexes, a commercial broadcaster is not entitled to more than one-ninth of the total transmission capacity under the two licences.

¹⁰ Section 118NP, *Radiocommunications Act 1992*

¹¹ Sections 118NQ(2)(e) and 118NR(3)(e), *Radiocommunications Act 1992*

3.1. Criteria for assessing undertakings

The legislative framework enables the ACCC to determine the criteria on which it will assess whether to accept or reject an access undertaking. The ACCC made these decision-making criteria on 23 May 2018 in accordance with section 118NJ of the Act.¹² The criteria are described below.

Whether the access undertaking complies with Division 4B Part 3.3 of the Act

Under section 118ND, a DRMT Licensee must provide an access undertaking to the ACCC within 50 days after the issue of a licence.

In assessing whether to accept an access undertaking the ACCC must consider whether the terms and conditions of access in the access undertaking comply with the access framework set out in Division 4B of Part 3.3 of the Act. The terms and conditions in an access undertaking must include terms and conditions that relate to standard access obligations and excess capacity obligations that are or may become applicable to a digital DRMT licence. The DRMT Licensee will be under an obligation to comply with those access obligations that are applicable to the licence on such terms and conditions as are ascertained in accordance with the accepted access undertaking (section 118NO).

Further obligations that a DRMT Licensee must comply with in accordance with the Act concern an obligation not to discriminate between content service providers who have access to multiplex capacity under the licence, in relation to the technical and operational quality of the services supplied, and the technical and operational quality and timing of fault detection, handling and rectification processes (section 118NP).

Whether the access undertaking unduly restricts competition in related markets

An access undertaking should not frustrate or unreasonably restrict the ability of an access seeker (a person with either a standard access entitlement and/or an excess capacity access entitlement) to provide services, including in competition with any services provided by other parties. Similarly, an access undertaking should not favour particular access seekers. For example, access seekers that are not constituent members of a DRMT Licensee should not be charged unreasonably high prices or provided with unreasonably low-quality services or be unreasonably disadvantaged in any other way relative to access seekers that are constituent members of a DRMT Licensee.

Under this criterion, a DRMT Licensee would, for example, be prevented from including provisions in its access undertaking that artificially inflated some access seekers' costs or enabled a DRMT Licensee to provide inferior services to some access seekers compared to those it offers to other access seekers, where this is not reasonable. It may be appropriate for the ACCC to consider whether the undertaking provides for the efficient use of the radiocommunications spectrum allocated for the purposes of the service.

In applying this criterion, the ACCC recognises that DRMT Licensees have a right to conduct their businesses to normal commercial standards, free from any undue or unfair interference caused by the rights of access seekers to access the multiplex capacity and associated services specified in the access undertaking.

¹² Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2018.

Whether the terms and conditions of access specified in the access undertaking are reasonable

The ACCC notes the objective in the Explanatory Memorandum to the *Broadcasting Legislation Amendment (Digital Radio) Bill 2007* that multiplex services (including bit rate) are provided to commercial, wide coverage community and data service operators on terms and conditions that are efficient, open and transparent, and generally non-discriminatory.

In the context of this objective, the ACCC considers that the terms and conditions of access in an access undertaking should be reasonable. The ACCC considers that the attributes characterising 'reasonable' terms and conditions include certainty, fairness and balance, timeliness and the removal of any potential for delaying access. Without limiting the range of issues that may be taken into account, the following examples are the kind of things which the ACCC may take into account in assessing the reasonableness of the terms and conditions contained in an access undertaking:

- the legitimate business interests of the DRMT Licensee and its investment in facilities used to supply the service
- the interests of persons who have rights to use the service
- the public interest in having competition in markets and efficient investment in facilities and services
- the operational and technical requirements necessary for the safe and reliable operation of the service
- the economically efficient operation of the network.

This criterion will not be applied unreasonably, as the ACCC accepts that DRMT Licensees may impose reasonable requirements on access seekers in certain circumstances.

Whether the access prices or pricing methodologies are fair and reasonable

All prices or pricing methodologies in the access undertaking must be fair and reasonable.

Fair and reasonable access prices included in an access undertaking should reflect the efficient costs of providing access to the multiplex capacity and associated services including a normal commercial rate of return.¹³ Reasonable access prices are required to ensure that the pricing of access to multiplex capacity is not excessive. Fair access prices ensure that access seekers are not disadvantaged for reasons which are anticompetitive.

If the actual access costs are known, it may be possible to specify prices in the access undertaking. However, if the DRMT Licensee does not know the actual access costs at the time of lodging an undertaking, it may instead provide a fair and reasonable pricing methodology. This might be the case, for example, if agreement with infrastructure owners/operators has not yet concluded.

If including a fair and reasonable pricing methodology, the ACCC would prefer that the access undertaking be supported by the DRMT Licensee's estimates of indicative prices, based on reasonable assumptions.

Whether there is an obligation on the DRMT Licensee to not hinder access

An obligation to not hinder access should be included in the access undertaking. The rationale for this obligation is that it is possible that a DRMT Licensee or a person authorised

¹³ Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2018, Explanatory Statement, p.7.

by a DRMT Licensee could do an act (or fail to do an act) that has the effect of hindering access to services.

For example, a DRMT Licensee or a person authorised by a DRMT Licensee may adopt certain technology or standards that have the effect of hindering access to some access seekers under the terms of the access undertaking.

However, an obligation to not hinder access would not be applied unreasonably. As an example, DRMT Licensees may require access seekers to be creditworthy or may require access seekers to demonstrate that they have the technical capabilities to provide their content stream in an appropriate format for multiplexing and broadcasting.

Whether the undertaking provides for a reasonable dispute resolution mechanism

In considering the dispute resolution mechanism (DRM) included in the undertaking, the ACCC will assess whether the provisions facilitate the fair, timely and efficient resolution of disputes, including through the appointment of an appropriate arbitrator within a reasonable timeframe.

In assessing the reasonableness of the DRM, the ACCC may consider, among other things, whether the DRM:

- sets out the appropriate triggers and timeframes for dispute resolution, including the process for dispute notification and dispute termination
- describes the process that will govern any dispute, including the definition and ambit of matters that may be resolved pursuant to the DRM and details of any differences between price and non-price processes
- identifies an appropriate arbitrator, or outlines a process for the selection of an appropriate arbitrator, taking into account the arbitrator's independence and impartiality, appropriate credentials and industry-specific knowledge and skills
- identifies (without limiting) the factors to which the arbitrator should have regard in considering a dispute, which should include the terms and conditions of the access undertaking
- defines the duties, functions, liability, authority and jurisdiction of the arbitrator
- defines the enforceability of any dispute resolution mechanism on the parties, including the enforceability of an arbitrated settlement.

This criterion ensures that the objectives of the other decision-making criteria may actually be enforced.

Other matters which the ACCC may consider

The criteria described above do not, by implication, limit the matters to which the ACCC may have regard in deciding whether to accept an access undertaking.

4. Proposed access undertaking for the Gold Coast

The following provides a summary of the key features of the proposed access undertaking for Gold Coast DRMT services.

Detailed information about the undertaking is available in the supporting submission (and proposed access undertaking and access agreement) submitted by Digital Radio Broadcasting Gold Coast Pty Ltd and available on the ACCC's [website](#).

4.1. Background

On 17 September 2021, the ACMA issued a *Broadcasting – Foundation Category 1 DRMT Licence* to Digital Radio Broadcasting Gold Coast Pty Ltd. This followed the *Radiocommunications (Foundation Category 1 Digital Radio Multiplex Transmitter Licence – Gold Coast) Declaration 2020* issued by the ACMA on 10 December 2020

A DRMT Licensee must, within 50 days after the issue of the licence, give the ACCC a written access undertaking. On 3 November 2021, the ACCC received a proposed access undertaking from Digital Radio Broadcasting Gold Coast Pty Ltd for Gold Coast DRMT services.

4.2. Key features of the access undertaking

Structure

The proposed access undertaking sets out the terms and conditions on which the DRMT Licensee will provide multiplex capacity to access seekers. The supply of multiplex capacity enables access seekers to obtain standard access entitlements and any available excess-capacity access entitlements to which they may become entitled.

The proposed undertaking gives effect to the rights and obligations of the DRMT Licensee and access seekers through an access agreement which provides the basis for the allocation of standard access entitlements and excess-capacity access entitlements.

Under the proposal, the access agreement will form part of the access undertaking and separately operate as a contractual document. This is to allow the DRMT Licensee to give effect to its regulatory obligations under the access undertaking in respect of each access seeker; and enter into an access agreement bilaterally with each access seeker on identical terms to that contained in the access undertaking.

The structure and approach for the proposed access undertaking and related access agreement aligns with previous access undertakings for DRMT services in regional and capital cities.

Service description

The proposed access undertaking provides for access to the Multiplex Transmission Service¹⁴ which comprises:

- a multiplexing service, comprising the multiplexing of digital channels from multiple access seekers into a single transport stream

¹⁴ A detailed service description is in Attachment A of the proposed access undertaking.

- a modulation service, comprising the modulation of the single transport stream using orthogonal frequency division multiplex in preparation for radio frequency transmission, and
- an RF service.¹⁵

The service description aligns with previous access undertakings for DRMT services.

Consistent with previous access undertakings for DRMT services, the supply of the service under the access agreement is subject to the non-discrimination obligations in section 118NP of the *Radiocommunications Act* in relation to technical and operational quality, as well as an obligation not to hinder access to the service.

Capacity allocation

As noted above, under the proposal the access agreement forms part of the access undertaking and separately operates as a contractual document.

The access agreement sets out the terms and conditions on which the DRMT Licensee will provide multiplex capacity. This is to enable:

- incumbent commercial broadcasters and digital community broadcasters to obtain a standard access entitlement to which it is entitled, and
- incumbent commercial broadcasters and digital community broadcasters to obtain an excess-capacity access entitlement that they may be entitled to under the Act.

The access agreement provides for the allocation of capacity between incumbent commercial broadcasters and digital community broadcasters consistent with the Act. That is, capacity allocated to community broadcasters is capped at two-ninths of overall capacity and commercial broadcasters are allocated seven-ninths of overall capacity.

The approach to capacity allocation aligns with previous access undertakings for DRMT services.

Access pricing

The proposed pricing principles for the DRMT service are set out in Schedule 2 of the access agreement and provide for the DRMT Licensee to:

- recover no more than its efficient costs, using market-based procurement mechanisms in relevant circumstances to ensure value for money
- obtain a reasonable commercial return on its investment, determined by reference to an ACCC-endorsed Weighted Average Cost of Capital (WACC) from another regulated sector which the Joint Venture Company (JVC) proposes to review once every 5-years
- use a simple straight-line depreciation method to ensure a smooth and predictable approach to the depreciation of assets over their useful life
- review its access charges annually, and
- consult with access seekers in relation to any adjustment to the level of access charges, including obligations to have regard to any feedback and the option for dispute resolution.

The methodology for setting annual charges is set out in Schedule 2 of the access agreement.

¹⁵ RF service - Radio frequency transmission of the orthogonal frequency division multiplex modulated transport stream.

The proposed pricing principles and methodology for setting annual charges are substantially the same as in previous access undertakings and access agreements for DRMT services.

However, the proposed access undertaking for Gold Coast DRMT services adopts a revised approach for periodic WACC adjustments included in access charges. Instead of making annual adjustments to the WACC, as adopted for previous access undertakings, the pricing principles for the Gold Coast undertaking provide for the WACC to be reviewed by the JVC once every five years. Digital Radio Broadcasting Gold Coast Pty Ltd.'s supporting submission states that this is to better align the access undertaking with regulatory practice in other sectors and to minimise administrative and pricing complexity for the JVC and access seekers. The JVC will adopt a WACC based on the most recent regulatory determination by the ACCC/AER at the date of the JVC's five-year price review. This WACC will be an input for charges set annually by the JVC for access to the DRMT services.

Also, in contrast to previous access undertakings, the proposed undertaking for the Gold Coast enables a truncated consultation period in respect of new charges for the DRMT services. That is, where access seekers agree to a reduced consultation period or notice period for the implementation of new charges. This new provision would not allow the JVC to truncate its consultation or implementation timeframes for new charges unilaterally.

Dispute resolution

Under the proposal, the procedures for resolution of disputes between the DRMT Licensee and access seekers are set out in Schedule 3 of the access agreement.

In summary, the procedures provide for:

- the triggers and timeframes for dispute resolution, setting out the processes and timeframes for escalation of disputes within each party's organisation and external dispute resolution bodies
- procedures that will govern dispute resolution between the parties, including processes for the parties to initiate disputes and escalate unresolved disputes
- processes to select a mediator or adjudicator, including selection criterion and provision for either party to refer a dispute for binding expert determination by giving the other party written notice, should a dispute not be resolved at mediation.

The approach to dispute resolution is consistent with previous access undertakings for DRMT services.

Attachment A – Questions for stakeholders

Question 1 – Does the undertaking comply with Division 4B of Part 3.3 of the Act?

Question 2 – Are there any aspects of the undertaking that unreasonably restrict competition for digital radio services or related markets?

Question 3 – Are the terms and conditions of access specified in the access undertaking reasonable?

Question 4 – Is the access pricing methodology in the undertaking fair and reasonable?

Question 5 – Is the proposal for the WACC to be reviewed once every five-years by the Joint Venture Company reasonable?

Question 6 – Do the terms and conditions of access specified in the access undertaking provide for a reasonable dispute resolution mechanism?

Question 7 – Are there any other matters which the ACCC may consider?