



# Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2008

*Radiocommunications Act 1992*

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The AUSTRALIAN COMPETITION AND CONSUMER COMMISSION makes this Determination under section 118NJ of the *Radiocommunications Act 1992*.

Dated 21<sup>st</sup> May 2008

  
Chairman

Australian Competition and Consumer Commission

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**1 Name of Determination**

This Determination is the *Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2008*.

**2 Commencement**

This Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

**3 Object of Determination**

The object of this Determination is to promote transparency in decision-making by setting out the criteria that the ACCC must apply in deciding whether to accept an access undertaking or a variation of an access undertaking given to the ACCC in relation to a digital radio multiplex transmitter licence.

**4 Definitions**

In this Determination, unless the contrary intention appears:

*ACCC* means the Australian Competition and Consumer Commission.

*access undertaking* means an undertaking under section 118ND of the Act.

*Act* means the *Radiocommunications Act 1992*.

*category 1 digital radio multiplex transmitter licence* has the meaning given by section 5 of the Act.

*category 2 digital radio multiplex transmitter licence* has the meaning given by section 5 of the Act.

*digital radio multiplex transmitter licence* means:

- (a) a category 1 digital radio multiplex transmitter licence; or
- (b) a category 2 digital radio multiplex transmitter licence.

*licensee* means a holder of a digital radio multiplex transmitter licence or any person authorised by the holder of the licence to operate multiplex transmitters under the licence.

*multiplex capacity* has the meaning given by section 118NB of the Act.

*variation of an access undertaking* means a variation of an access undertaking under section 118NH of the Act.

**5 Acceptance of access undertakings**

- (1) In deciding whether to accept an access undertaking, the ACCC must have regard to the following matters:
  - (a) whether the access undertaking complies with Division 4B of Part 3.3 of the Act;
  - (b) whether the access undertaking unduly restricts competition in related markets;
  - (c) whether the terms and conditions of access specified in the access undertaking are reasonable;
  - (d) whether the terms and conditions of access specified in the access undertaking include access prices or pricing methodologies which are fair and reasonable;
  - (e) whether the access undertaking includes an obligation on the licensee to not hinder access to services;
  - (f) whether the terms and conditions of access specified in the access undertaking provide for a reasonable dispute resolution mechanism.
- (2) Subsection (1) does not, by implication, limit the matters to which regard may be had.

**6 Acceptance of variations of access undertakings**

- (1) For the purposes of this section, in deciding whether to accept a variation of an access undertaking, the ACCC must have regard to the matters in subsection 5(1) of this Determination.
- (2) Subsection (1) does not, by implication, limit the matters to which regard may be had.

*Note:* Section 118NH of the Act permits a licensee to give the ACCC a variation of an access undertaking and also requires such a licensee to give the ACCC a variation of an access undertaking where the ACCC requires it to do so.