
Market Arrangements Code Change Proposal – Ref CPM016

Modification proposal	CPM016 – Panel Voting Majorities
Decision	The Authority has decided to approve this Change Proposal
Publication date	22 August 2019
Implementation date	23 August 2019

Background

The Market Arrangements Code (MAC), section 5.10, sets out the Panel’s voting arrangements for modifications to either the MAC or the Wholesale-Retail Code. Currently, a matter to be decided by vote must be made by either a unanimous decision or by a Qualifying Majority.

A Qualifying Majority is not less than ten, out of up to 12 voting Panel Members (excluding the Panel Chairman), voting on a proposal for a decision to pass, either to recommend the modification is made or not. The Panel Chairman is currently the 13th voting member however, under current custom and practice the Panel Chairman usually abstains from exercising his voting right. Section 5.10.2 of the MAC provides for circumstances where the Panel is quorate¹, but a Qualifying Majority cannot be reached. In these circumstances, a vote is required to be unanimous to pass (abstentions do not count as a cast vote).

A Panel workshop took place in January 2019, following which a Panel sub-group has discussed the effectiveness of the Panel’s current voting arrangements. It has developed this Change Proposal to address issues it had identified with the Qualifying Majority voting mechanism and the impact this could have on the efficiency of the change process going forward.

¹ As defined by section 5.9.1 of the MAC: “A quorum shall be a minimum of the Panel Chairman (or an Independent Director nominated by the Panel Chairman under Section 5.3.2), two (2) Associated Retailer Panel Members, two (2) Unassociated Retailer Panel Members, two (2) Wholesaler Panel Members and two (2) Independent Panel Members (or any of their alternates entitled to be present), each of whom must be entitled to vote at that meeting.”

The issue

The Panel sub-group considered that the bar for the Qualifying Majority voting mechanism is high as it requires at least 10 votes, out of up to 12 (excluding the Panel Chairman), to be in favour for a decision to be made on whether a change proposal should be recommended for approval or rejection to Ofwat. Additionally, the bar can be very low in some circumstances. For example, a decision could pass where eight Panel Members abstain from voting but the remaining four Panel Members unanimously agree on the decision.

The Final Report highlights that there have been previous Change Proposals where the Panel has been unable to make a decision, or the proposal has been rejected despite a large majority of voting Panel Members being in favour of it. The Final Report provides an example of how the Qualifying Majority voting mechanism can lead to inefficiencies, the example provided is CPW018 Clarification of Unsecured Credit Allowance. In that instance there were two separate Panel votes, neither of which reached a qualifying majority regarding the decision to send the issue out to an industry consultation or establishing a working group. This example demonstrates how the current voting mechanism could result in delays during the Change Proposal process. The sub-group suggested that greater efficiency in Panel decision making could be achieved if this voting mechanism was amended.

In addition to the above, the Panel sub-group highlighted that Panel's current Qualifying Majority voting mechanism does not align with that used by Panel sub-groups and Committees.

The modification proposal²

It is proposed that the current Qualifying Majority voting mechanism is amended to a Simple Majority plus one voting mechanism. This would result in decisions being passed if the majority of votes, plus one are in favour or against a change proposal. Abstentions would not be counted as votes.

Qualifying Majority voting will be retained for determinations to remove a Panel Member under section 5.6.11(b).

² The proposal and accompanying documentation is available on the MOSL website at <https://www.mosl.co.uk/market-codes/change#scroll-track-a-change>

This Change Proposal does not seek to alter the Panel quorum in any way, including if Change Proposal CPM013 (Voting Customer Representative) is approved and implemented.

Industry consultation and assessment

No consultation was undertaken in relation to this Change Proposal as the Panel sub-group considered that the Change Proposal:

- Has no impact on Trading Party systems or processes;
- Has minimal impact on Market Operator costs; and
- Relates to internal Panel governance which the sub-group considered that the Panel should take the lead on as it is best placed to improve its own operations and efficiencies.

Panel recommendation

The Panel considered this Change Proposal at its meeting on 23 July 2019. It recommended that the Authority approve this proposal. This recommendation has been made on the basis of improving the principle of efficiency. The recommended date of implementation is 20 Business Days after Authority approval is received.

Our decision

We have considered the issues raised by the modification proposal and the supporting documentation provided in the Panel's Final Report. We have concluded that the implementation of CPM016 will better facilitate the principles of the MAC, detailed in Schedule 1, MAC Principles and Definitions, and is consistent with our statutory duties.

We have decided that this change will be implemented on 23 August 2019 to enable the benefits of the revised voting arrangements to be realised at the earliest opportunity.

Reasons for our decision

Having reviewed the evidence provided by the Panel in its Final Report, we consider that approving this Change Proposal should improve the efficiency of decision making by the Panel and therefore benefit customers. This is because the high threshold of the Qualifying Majority voting mechanism can result in the Panel being unable to reach a decision, or proposals can be rejected or delayed despite a large number of Panel Members being in support of them. The ability for the Panel to make more efficient decisions could result in the benefits of some Change Proposals

being realised, where they might otherwise not have been, and/or being realised sooner.

We also consider that this Change Proposal restricts the potential for a minority of Panel Members from the same voting constituency, despite the requirement for all Panel Members to act impartially, being able to effectively veto a proposed change to protect the commercial interests of their organisations.

We have set out below our views on which of the code principles are better facilitated by the modification proposal.

Efficiency

We agree with the rationale provided by the Panel sub-group that this proposal will further the principle of efficiency because it seeks to facilitate more efficient decision making by the Panel. It will reduce the likelihood of a deadlock where no Qualifying Majority can be reached, which could delay or even prevent changes that would benefit customers being implemented.

Proportionality

We consider that this Change Proposal is proportionate to address the identified issue, there are no associated CMOS or Trading Party costs.

Decision notice

In accordance with paragraph 7.2.8 of the Market Arrangements Code, the Authority approves this change proposal.

Georgina Mills

Director, Business Retail Market