
Market Arrangements Code Change Proposal – Ref CPM022

Modification proposal	Market Arrangements Code Change Proposal – CPM022 – Urgent: Reducing Panel Quorum
Decision	The Authority has decided to approve this Change Proposal with a modification
Publication date	1 October 2020
Implementation date	7 October 2020

Background

The Market Arrangements Code (**‘MAC’**) sets out the governance arrangements for, amongst other things, how Panel meetings are conducted. In particular, it specifies that no business shall be transacted at any Panel meeting unless a quorum is present at the meeting. Quorum currently consists a minimum of:

- the Panel Chairman (or an Independent Director nominated by the Panel Chairman);
- two Associated Retailer Panel Members;
- two Unassociated Retailer Panel Members;
- two Wholesaler Panel Members; and
- two Independent Panel Members (or any of their alternates entitled to be present)

each of whom must be entitled to vote at that meeting. At full capacity, there should be three Associated Retailer Panel Members but only two out of these three positions are currently filled.

At the time that this proposal was originally raised, in March 2020, there were concerns that the Panel would not be quorate from the date of the resignation of an Associated Retailer Panel Member on 31 March 2020.

The Authority did not make a decision on this Urgent Change Proposal at the time it was submitted because a new Associated Retailer Panel Member was appointed. Therefore, the Panel was able to achieve quorum and continue making decisions at its meetings. A further Associated Retailer Panel Member has since resigned from the Panel and a replacement again has been appointed. However, no nominations

have been received to fill the third Associated Retailer Panel Member position. As this position remains vacant, there continues to be a risk that if one of the current Associated Retailer Panel Members is unable to attend a Panel Meeting, the Panel would not be able to achieve quorum.

The Change Proposal

It was proposed that the Panel quorum should be reduced by removing the distinction between Associated and Unassociated Retailers and setting the overall total number of Retailer Panel Members required to achieve quorum at three. This was proposed to ensure that the Panel is able to continue to conduct its business efficiently as the vacant positions for Associated Retailer Panel Members would have been much less likely to impact quorum. The Change Proposal did not seek to modify the overall composition of the Panel.

There was no consultation on this Change Proposal, the Final Report states that this was because ‘the change affects how the Panel conducts business rather than the business of Trading Parties’.

Panel recommendation

The Panel considered this Change Proposal at its meeting on 31 March 2020.

During the meeting, one Panel Member raised a concern that the Change Proposal would dilute the Retailer constituency on the Panel. This Panel Member suggested that there should either be a commitment from MOSL to restore the current quorum arrangements in the future or for a sunset clause to be added. As an Associated Retailer Panel Member nomination had subsequently been received, one of these positions was filled from 4 May 2020. In view of the nomination, it was agreed that a clause should be included in the drafting limiting the reduction in quorum to two months (ending 31 May 2020). The Change Proposal was therefore amended to include a sunset clause so that the reduced quorum would only have applied until 31 May 2020.

At the Panel meeting, the Customer Representative Panel Member expressed disappointment that, despite three calls for nominations to fill the vacant position for an Associated Retailer Panel Member, the position had remained vacant since April 2019. It highlighted the importance of Trading Parties’ contribution to helping to shape the market for the benefit of customers. However, given the position at the time and the resulting additional Associated Retailer Panel Member vacancy that had arisen, the Customer Representative Panel Member supported the Change Proposal. They also encouraged Retailers to further consider putting themselves forward during future calls for nominations.

The Panel recommended, by unanimous decision, that the Authority approve the Change Proposal with the inclusion of a sunset clause. This recommendation was made on the basis of furthering the principle of efficiency. The Panel recommended implementation of the Change Proposal on or before 28 April 2020.

Our decision

We have considered the issues raised by the Change Proposal and the supporting documentation provided in the Panel's Final Report and we have decided to approve this Change Proposal, subject to a modification related to the date of the proposed sunset clause.

The original proposal was that a sunset clause would be inserted into the Code to provide that the quorum requirements would revert back to the standard requirements on 31 May 2020. This date has now elapsed. However the full capacity of Associated Retailer Panel Members has still not been achieved and it is important to ensure that the Panel is able and can continue to make recommendations on code change proposals and other decisions under its remit where appropriate. We echo the comments of the Customer Representative Panel Member, and strongly encourage those that are eligible to put themselves forward to become Panel Members when there are calls for nominations in the future.

We are aware of and fully support MOSL's review of market governance which, among other things, will consider the composition of the Panel. We understand that recommendations arising from this review are likely to emerge early in 2021, around the time that the elections process for Panel Members' appointments for the term beginning 1 April 2021 will take place. To ensure that Panel is able to reach quorum whilst these broader governance issues are considered, we support the inclusion of a sunset clause which will temporarily reduce quorum and will result in the requirements for quorum being reinstated at a future date, subject to the findings of MOSL's review.

Given that this Change Proposal has not been subject to industry consultation, we have decided to modify the date on which the reduced quorum requirements should expire to 31 March 2021. Prior to expiry of the reduced quorum, we encourage MOSL to consider whether any recommendations arising from the review of market governance could be implemented ahead of 1 April 2021, or to propose a further extension to this sunset clause, which should be the subject of an industry consultation.

We have concluded that the implementation of CPM022 will better facilitate the principles of the Market Arrangements Code (set out in Schedule 1) and is consistent with our statutory duties. We consider that the Change Proposal will further the

principle of efficiency because temporarily reducing the quorum will enable the Panel to continue to operate in the case that one of the two current Associated Retailer Panel Members is unable to attend a Panel Meeting. We have decided to approve this Change Proposal with an implementation date of 7 October 2020.

Decision notice

In accordance with paragraph 7.2.8 of the Market Arrangements Code, the Authority approves this Change Proposal with a modification.

Georgina Mills
Director, Business Retail Market

Appendix 1: Modifications to the legal drafting for CPM022

Market Arrangements Code

On page 39, Section 5.9, Quorum:

- 5.9.1 No business shall be transacted at any meeting of the Panel unless a quorum is present at the meeting, unless it is an Urgent Panel Meeting where the steps under 5.8.4 should be followed. A quorum shall be a minimum of the Panel Chairman (or the Panel Deputy Chairman, or other appointed Panel Chairman nominated by the Panel under Section 5.3.3), 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.
- 5.9.2 Notwithstanding Section 5.9.1, for the period up to and including ~~31-May~~ March 2021~~0~~, an interim quorum shall apply. This interim quorum shall be a minimum of the Panel Chairman (~~or an Independent Director nominated by the Panel Chairman under Section 5.3.2 or the Panel Deputy Chairman, or other appointed Panel Chairman nominated by the Panel under Section 5.3.3~~), any three (3) Panel Members who are Retailers, 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.