
Wholesale Retail Code Change & Market Arrangements Code Change Proposals – Ref CPW119 & CPM042

Modification proposals	Wholesale Retail Code (WRC) and Market Arrangements Code Change Proposals (MAC) – CPW119/CPM042 – Dormant Trading Party provisions
Decision	The Authority has decided to approve these Change Proposals
Publication date	6 October 2021
Implementation date	5 November 2021

Background

It is not a requirement that a Retailer must hold a Supply Point to be a Member of the Market Operator. Being a Member of the Market Operator enables a Trading Party to for example, vote at meetings of the Market Operator and Market Operator Board Nominations Meetings.

There is currently no distinction provided in the codes between Trading Parties that hold Supply Points and those that do not. The Final Report details that as of May 2021, there were seven Trading Parties that held no Supply Points, six of which had voting rights.

The issue

The Final Report details that there are a number of Trading Parties that have held zero Supply Points for a 'significant' period of time¹. This is reported to impact on:

- The Market Operator membership votes as 'dormant' Trading Parties are able to vote at Meetings of the Market Operator and at Board Nomination Meetings. There is a risk to quorum of these meetings if dormant Members do not attend;

¹ Unless otherwise specified, the terms used in this document are those defined in the MAC and the WRC as approved by this document

- The integrity of the Central Market Operating System (CMOS) and market data where following a period of dormancy Trading Parties may have lost knowledge or expertise required to interact with CMOS; and
- Market Operator charges which are calculated on the number of Supply Points held – a Trading Party with zero Supply Points does not incur any such charges although has full access to the Market Operator's services and is said therefore to be incurring a cost to the market.

The Final Report also suggests that there is little incentive for a Trading Party with no Supply Points to either actively seek out customers or exit the market. It is said that this is because there is no cost, other than the Ofwat annual licence charge to remain a market participant. The Final Report states that it is considered the issue has potential to grow in the future.

The Change Proposals²

It is proposed that a new 'Dormant Member' status is introduced for Trading Parties that have not held at least one Supply Point for 12 consecutive months.

The consequences of a Trading Party being classified as a Dormant Member would be:

- Restricted voting rights – Dormant Members would be designated non-voting Members and therefore, whilst they would be able to attend and speak at meetings of the Market Operator, whilst they remain a Dormant Member, they would be unable to participate in Market Operator Member voting, including at Board Nomination Meetings (the Articles of Association will also be amended to achieve this).
- Market Re-assurance – Dormant Members would retain access to CMOS but would be required to undergo the Market Re-Assurance process when acquiring a Supply Point. The scope of the re-assurance required would be determined by the Market Operator based on the information provided during the original Market Entry Assurance. The Market Operator would be able to recover reasonable costs incurred for re-assurance, the estimated range of costs in these circumstances are between £500 and £2500.
- Market Operator Charges – A minimum £250 per month fee would be introduced. This amount is equivalent to the charge applicable for Trading Parties with one Supply Point.

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

Industry consultation and assessment

An industry consultation on these Change Proposals was published on 24 May 2021 and closed on 11 June 2021. There were 21 respondents, 10 Wholesalers and 11 Retailers.

Most respondents (10 Wholesalers and 10 Retailers) were supportive of the proposal to create a distinction between Trading Parties that are actively supplying retail services to customers, and those which are not. Respondents agreed that a lack of market experience could translate to a lack of contribution to the customer's experience of the market. A respondent expressed concern that Trading Parties with no Supply Points has almost cost-free access to market data, which they did not consider should be possible. The one respondent that did not agree suggested that if a Trading Party is compliant and pays the proposed fee, there should be no distinction based on dormancy.

18 respondents supported the proposed criteria for categorising Dormant Members. Of those that did not agree, concerns were expressed that a Dormant Member could acquire one Supply Point, potentially relating to its own business, to avoid being classified as a Dormant Member. In relation to the proposed 12 month timeframe, two Trading Parties considered this to be too long, both suggested that the timeframe should instead be six months. A respondent considered the timeframe to be too short and argued that there could be positive reasons why a Trading Party might not hold any Supply Points for 12 months for example, system upgrades.

All 21 respondents agreed with the restrictions proposed in relation to voting rights of Dormant Members. A respondent suggested that the restriction on voting rights could instead be based on engagement – if a Dormant Member does not actively engage with the market and exercise its right to vote, they will lose the right to vote until they actively engage by acquiring one or more Supply Point.

In relation to the proposal that Dormant Members should be required to undertake Market Re-assurance where they subsequently acquire customers, respondents were supportive. One respondent did however question whether the costs for re-assurance would end up being passed on to customers. The Proposer confirmed that the costs charged by the Market Operator would need to be reasonable costs (including by being proportionate to the level of re-assurance that is required) and must be itemised. The Proposer considers that the impacts for customers should therefore be low.

With regard to the proposed £250 monthly charge for Dormant Members, all respondents supported the proposal. Respondents suggested that the amount seemed responsible although, a number thought that this should be monitored to ensure that it does not overburden Dormant Members but provides incentive to either participate in,

or exit, the market. The Proposer confirmed that the charge would be kept under review.

Panel recommendation

The Panel considered this Change Proposal at its meeting on 31 August 2021. It recommended, by unanimous decision, that the Authority approve this proposal. This recommendation has been made on the basis of improving the principles of efficiency, barriers to entry and simplicity, cost effectiveness and security³. The recommended date of implementation is 13 October 2021.

The Panel questioned whether a Dormant Member would retain access to market data and whether this could be misused. It was confirmed to the Panel that this risk already exists although the codes do restrict use of data to market purposes. The Panel considered that the £250 monthly fee for Dormant Members was reasonable and represented very good value considering the data which Trading Parties have access to.

The Panel noted that the introduction of the re-assurance provisions where a Dormant Member wishes to acquire customers provided a level of protection for customers and market data.

The Final Report details that the Panel were satisfied that the criteria for Dormant Members avoided discrimination against self-supply Retailers who may only have one Supply Point. It is noted that the Panel recognised that the number of Supply Points is not necessarily reflective of volume.

Our decision and reasons for our decision

We have considered the issues raised by these Change Proposals and the supporting documentation provided in the Panel's Final Report. We have decided to approve the proposals. We have concluded that the implementation of CPW119 / CPM042 will better facilitate the principles and objectives of the WRC and MAC (detailed in Schedule 1 Part 1: Objectives, Principles and Definitions of the WRC and Schedule 1 of the MAC, Principles and Definitions), and is consistent with our statutory duties.

³ Note that the Panel's recommendation was made prior to implementation of [CPW040/CPW0121](#) on 1 September 2021 which introduced revised principles of the MAC and WRC.

We consider that the Change Proposals further the **primary principle** of the WRC and the MAC as it has been developed, and will operate in a manner, which promotes the interest of existing and future customers.

We agree the Change Proposal is consistent with the **supporting principle of proportionality** as it contains provisions that are proportionate and targeted to the three issues identified.

These proposals ensure that those engaging with CMOS will have provided appropriate assurance regarding competency and undergone sufficient training. This will help to protect the quality of market data and therefore further the **supporting principle of simplicity, cost effectiveness and security** by providing appropriate additional measures to protect the data in CMOS for the benefit of future and existing customers. We acknowledge that this process might cause some initial onboarding delays for the first customer(s) following any period of dormancy although we consider that delay to be outweighed by the longer-term benefits offered to future customers if Trading Parties complete the Market Re-assurance process. We note that the Market Re-assurance process will also be proportionate and tailored to the circumstances of the Retailer, this can contribute to mitigating any such delays which may be experienced.

We consider that the restrictions on the voting rights for Dormant Members reduces the risk that there will be quoracy issues where these Members elect not to attend and vote at Meetings of the Market Operator. These proposals therefore advance the **supporting principle of continued development and sustainment of an effective market**.

Decision notice

In accordance with paragraph 7.2.9 and 6.3.7 of the MAC, the Authority approves these Change Proposals.

Georgina Mills
Director, Business Retail Market