

## Febeliec answer to the Elia CRM Design Note on the Secondary Market

Febeliec wants to strongly indicate that the answer on this consultation is at best partial as it has currently **no** view on **all** the different pieces of the puzzle concerning the introduction of a Capacity Remuneration Mechanism in Belgium based on reliability options as described in the Electricity Law. Febeliec reserves the right to come back on any of the comments made in this answer, as it has at this point no complete overview and as such can under no circumstance be asked to provide a thorough and complete position.

Febeliec urges Elia but also CREG and the Federal Public Service Economy as well as the Cabinet of the Minister of Energy to provide as soon as possible and in any case before the introduction of the final design for a CRM in Belgium a complete overview of all the intertwined components of the CRM design, including the legal texts such as Royal Decrees and modifications of the Electricity Law to bring it in line with amongst others European legislation, in order to be able to get an overall view on the implications and modalities of the introduction of the CRM to Belgian consumers and the overall energy markets.

With respect to the current proposed design note on only the topic of the secondary market, Febeliec wants to provide these first preliminary remarks, within the scope described above:

- Febeliec first wants to reiterate its proposal, voiced in previous consultations as well as during the meetings of the Task Force, to limit the scope of the timeframe of the CRM to only the winter months and not to the entire calendar year, in analogy with the methodology applied for the existing Strategic Reserve. This would create multiple positive effects, such as the possibility for more assets to participate as the period of monitoring and delivery is more limited, while in any case providing an answer to the *raison d'être* of the CRM, ensuring system adequacy, as no risk for system adequacy has ever been identified by Elia outside of the winter months. In the framework of the consultation at hand, it would also limit the need for a secondary market to only unplanned and planned outages during the winter. If one takes into account that capacity providers would have a clear incentive (coming from the remuneration from the CRM and the penalties for unavailability in the winter period linked to the CRM) to be available during the winter months, this would thus limit the scope of the secondary market to unplanned outages only. According to Febeliec, such approach would address system adequacy concerns during the relevant winter period, while limiting to a great extent the need for a secondary market (and thus the potential market power of certain actors on that secondary market) to events that are supposedly quite randomly spread over all participants, while at the same time strongly nudging all participants to schedule their planned outages (e.g. maintenance, overhauls, ...) during the other months of the year. Such approach would also bring benefits to a wide range of other design elements in the CRM design, a.o. on the Opt-out (IN-OUT) discussion, the availability monitoring, the penalty scheme for non-winter periods (no longer required), and so forth. Febeliec very strongly urges Elia, but certainly also CREG and FPS Economy to have a serious look into this approach. Applying this approach would also strongly coincide with the prevention of undue barriers for entry, next to limitation of market power and potential abuse thereof.
- Febeliec strongly wants to voice its concerns that Elia is referring throughout this as well as other design notes to the criterion of overall complexity avoidance. While Febeliec in no way

pleads for a complex design, such criterion should at best be of secondary magnitude. This is also clear from the context of the law, that provides criteria, not in the least the least cost of the CRM criterion, but does not mention simplicity of the design as a prerequisite. Febeliec does not accept at all that a trade-off is made between criteria defined by the law, such as explicitly the least cost criterion, with secondary criteria introduced by Elia such as complexity avoidance (and even more so as the management of the complexity of the CRM seems to be applied mostly towards Elia and not the participants to the mechanism). However, Febeliec strongly supports the application of such criteria insofar and after the legally defined criteria are met. In that sense, Febeliec is also worried by Elia stating on multiple occasions, in this as well as other design notes, that it is crucial to address design elements not individually but taking into account the “bigger picture” (which is not provided by Elia, cf. above) and that it *“could be that giving in (slightly) at one place in the CRM design could leverage more positively in terms of cost management elsewhere”*, while however never providing any quantitative analysis nor clear and concise qualitative argumentation for these statements. Febeliec remains utmost concerned that this approach could violate the clearly defined criterion described in the law on the least cost of the CRM and urges Elia as well as the other parties developing the CRM to provide clear and quantitative analysis of such statements whenever applied.

- With respect to liquidity, and notwithstanding the abovementioned comments on the delivery period for the CRM, Febeliec’s position is that all available capacity for the secondary market should be offered by all capacity holders to the secondary market, whatever the chosen design of that secondary market may be. In case of a title transfer facility this is clear, but even in case of OTC markets a bulletin board or other mechanisms ensuring that no party can withhold capacity in order to influence the market can be constructed. Moreover, this obliged offering of all available capacity to the secondary market should be monitored (e.g. by Elia) and any deviations should be duly clarified and/or penalized (e.g. by Elia and/or CREG and/or FPS). Febeliec in any case most strongly objects any design of the secondary market that would allow any market party to abuse market power as this would strongly go against the interest of the consumers and society as a whole and would definitely also increase the cost of the CRM.
- On the secondary market design, Febeliec is in principal in favour of a full transfer of obligations. Febeliec strongly opposes any approach that shifts risks towards society and consumers in order to avoid parties having to seek volumes in a secondary market because they are unable to deliver the agreed upon contractual obligations to divulge information on their remuneration.
- Febeliec is strongly of the opinion that the secondary market should primarily be there to allow parties to cope with unexcepted events (and in case the delivery period for the CRM is a full year, in order to cope with planned outages such as maintenance and overhauls, although Febeliec prefers another approach as described above) and not be used as a standard element of the design in order to swap obligations. The latter would also be intuitively difficult to explain as it would mean that many parties would have ample capacity to trade in the secondary market, which would lead one to believe that a clear overdemanding of the CRM has been conducted in the volume determination, to the detriment of consumers and the cost of the CRM. By doing so Elia also voids a lot of issues regarding the penalties, as no elaborate penalty scheme would need to be devised in order to ensure that capacity is made available by those actors with only capacity in the secondary market or primary and secondary market, as the possibility to withhold capacity remuneration in case the service is

not rendered will remain intact<sup>1</sup>; this should then in its turn, in secondary priority, also contribute to Elia's criterion of limiting overall complexity, while guaranteeing the primary objective of system adequacy and least cost of the CRM.

- Febeliec urges Elia to correct its definitions and use of defined terms in its design notes. For example (non-exhaustive), in the design note concerning the secondary market, Elia states that in the secondary market obligations are transferred from one CMU to another CMU. The use of the term CMU in the context of a secondary market is not correct when taking into account the current definition of a CMU, since this links to Service delivery. The definition of Service then includes the Capacity Contract. A Capacity Contract is defined as a contract between the Contractual Counterparty and a Capacity Provider, which is a Capacity Holder selected in the primary market (“... every Capacity Holder selected after closing of the Auction...”). Febeliec concludes that the current definitions imply that a CMU cannot be a unit not selected in the primary market auction. Furthermore in design proposal #2 Elia states that all potential participants to the Secondary Market have to sign a Capacity Contract with the Contractual Counterparty. Febeliec agrees that a contractual basis between Capacity Holders and the Contractual Counterparty is needed prior to participation in the Secondary Market. However, as stated above, Capacity Contracts cannot be used in this context as they are defined as contracts concluded between the Contractual Counterparty and a Capacity Provider after the selection of this Capacity Provider in the Auction. For the Capacity Holders not selected in the primary market or not participating in the Auction, there should be a contract that enables them to participate in the secondary market and that covers their obligations towards the Contractual Counterparty following such participation. It is clear from the design note text that it is not the objective of Elia to exclude Capacity Holders not selected in the primary market from the secondary market and thus Febeliec asks to correct the texts and definitions currently consulted upon.
- Febeliec also remains with questions related to energy constrained CMUs as described in the answer on the design note on availability obligations and penalties: Febeliec is concerned that the proposal by Elia for energy constrained CMUs could lead to situations where the required SLA is delivered in hours 1 and 2 of the example of Elia, but where this asset (e.g. battery) sharply would recharge during hour 3, in order to participate to the secondary market in hour 4 (and following), which could create unwanted effects for the adequacy situation in hour 3. Febeliec thus invites Elia to have a better look at the proposed approach, as it is not sure that this will lead to the desired verification while not creating unwanted perverse effects.
- Febeliec also wants in the utmost possible way oppose the proposal by Elia which foresees in the determination of a new strike price for any transfer of obligations between primary and secondary market at the moment of the transfer of obligations, as this will clearly open the door to gaming against the interest of consumers. Febeliec is strongly disappointed that Elia, despite a long discussion on this topic at the TF CRM and without any argumentation from the side of Elia on all the comments regarding potential gaming as a result of this chosen approach, has omitted to provide any clear analysis why it has chosen to persist in this approach. Febeliec is very strongly concerned by this approach and the neglect of strong and justified concerns by market parties, not in the least those that will have to pay for the CRM.

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<sup>1</sup> To a certain extent as the penalty during the winter period can reach twice the amount of the remuneration, with the difference then to be invoiced by Elia to the concerned party. Febeliec remains in favour of a bank guarantee to cover this additional amount in order to protect the consumers against default on this penalty and does not consider this an undue entry barrier.

The modification of the strike price at any moment of a transfer of obligations via the secondary market would allow all participants whenever a higher strike price would be set to swap their obligations between them, thus clicking in a higher strike price as the initial strike price of the contract and thus limiting at each of those occasions where a higher strike price would be set again the potential for reimbursement of part of the CRM remuneration to the consumers, as is the purpose of the Belgian design with reliability options. For Febeliec, and against the argumentation and analysis by Elia in the design note, covering the issues related to the initial strike price and the impact over time, this should be part of the bilateral contractual arrangements between the actors in the primary and secondary market who want to transfer obligations. Alternatively, Elia could for example also look into a solution where the strike price will be determined based on an in advance known formula, which would be updated yearly for existing as well as new contracts, thus having at any point all active contracts under the same strike price. Febeliec in this context wants to reiterate its abovementioned comment that it believes that the secondary market's purpose is to allow actors to cover specific periods.

- On Elia's proposal regarding collateral for assuring that the requested service will be delivered and in order to ensure that no additional barriers to entry are put in place, such as bank guarantees, Febeliec wants to point out that its proposal does remove this issue completely, as the remuneration would transfer together with the transfer of the obligation, thus always allowing Elia to claw back this remuneration in case of non-delivery or non-compliance<sup>2</sup>. Moreover, Febeliec is not convinced that the proposed approach by Elia would not be in breach of the non-discriminatory criterion and would hold up in court in case of any contestation.

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<sup>2</sup> To a certain extent as the penalty during the winter period can reach twice the amount of the remuneration, with the difference then to be invoiced by Elia to the concerned party. Febeliec remains in favour of a bank guarantee to cover this additional amount in order to protect the consumers against default on this penalty and does not consider this an undue entry barrier.