

## Febeliec answer to the Elia consultation on the CRM Functioning Rules V3

Febeliec would like to thank Elia for this consultation on the Functioning Rules (version 3) of the CRM. Febeliec wants to refer to its numerous comments on the shortcomings and issues with the Belgian CRM, which are also reflected in the Functioning Rules. Febeliec will not dive into the specifics of the proposed functioning rules themselves, but this should not be interpreted as an approval from Febeliec as it considers the underlying design to be flawed in many domains.

On the topic of the payback obligation and the related topic of strike price, Febeliec would like to refer to the basics of the Belgian CRM. The purpose of the CRM is to ensure security of supply as a last resort measure if no other alternative solutions can ensure that assets are not facing missing money and thus risk leaving the system, while at the same time avoiding windfall profits which would unnecessarily increase the cost of the CRM and would be non-compliant with the legal lowest cost criterion. Febeliec also wants to reiterate its fundamental position that the intrinsic differences between the various technologies are too broad to allow for a single strike price to ensure the above premise. Febeliec has from the conceptual phase indicated this issue, yet the CRM design does not take that into account (which could have been done by for example asking every CRM candidate to make an offer including an individual strike price). Febeliec strongly believes that the only way to compensate for (if any) missing money is a separate approach by technology (or even by asset) to ensure that no windfall profits would be generated (e.g. by looking at the clean spark spread for generation assets). On the proposal by Elia, it remains for Febeliec even after the working groups and documents unclear why a future revised strike price formula/methodology would have to be composed of a fixed and a variable component and even more so why Elia is proposing a non-symmetrical solution for the variable component as it would not be allowed to become (theoretically possible) negative, even if the corresponding benchmark would result in a negative value. In any case, while Febeliec understands that the current extreme market conditions could indeed require a more dynamic determination of a strike price, it is fundamental that such more dynamic strike price determination methodology should ensure that not only the strike price level would rise in case of rising market prices (such as currently be observed) to ensure that missing money (if any) would still be covered, but also that the strike price should drop fast enough whenever market prices would decrease again. It is also in this light that Febeliec does not understand why a fixed component should be introduced in the strike price formula as it would put a maybe too high floor level into the mechanism if not well conceived.

While for generation assets, Febeliec as indicated above would be in favour of a cap on the clean spark spread per technology (or even asset), which would ensure covering missing money without providing windfall profits, it has been from the conceptual phase clear to Febeliec that a strike price for Demand Side Response in a CRM is not a sound approach, which was also partially accepted in the design with the inclusion of declared market prices. Nevertheless, even this approach does not solve the issue as DSR might have to pay back money that was never earned, leading to a very negative position compared to generation assets, while in any case the approach is not suited for the problem of the underlying opportunity costs for DSR which are the driver for demand reduction and demand shifting rather than the market prices as such. Febeliec is thus in favour of removing the strike price for DSR, as DSR will be activated in function of opportunity costs and in any case will have to prove its availability either by activation or tests.

Concerning retroactive modifications to the strike price for already contracted capacities in the CRM, Febeliec must insist that it fundamentally cannot support breaking into existing contractual relationships as this leads to a retrogradation of legal certainty and opens the box of Pandora if such retroactive changes are applied evermore frequently. However, considering the recent and unexpected extreme market situation, Febeliec understands that the historical approach might lead to undesired outcomes for the contracted parties. Febeliec nevertheless imagines that participants to the auctions should have already included (at least partially) extremer scenarios (with potentially lower probabilities) in their bids (especially for multi-year contracts) and thus most strongly insists that it would be unacceptable that by modifying the strike price retroactively, windfall profits could be locked-in (which would also violate the legal lowest cost criterion). Hence, Febeliec proposes that for the (quite limited number of) already contracted assets a neutral party such as the energy regulator can on an individual case-by-case basis, if requested by the contracted party, determine whether the historical strike price leads to problems with missing money in light of fuel costs (as all other costs could and probably should have been locked in when signing the contract and taking the related investment decision). Such approach would allow for concerned parties to introduce an individual file to ensure that

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*Febeliec represents industrial energy consumers in Belgium. It strives for competitive prices for electricity and natural gas for industrial activities in Belgium, and for an increased security of energy supply. Febeliec has as members 5 business associations (Chemistry and life sciences, Glass, pulp & paper and cardboard, Mining, Textiles and wood processing, Brick) and 39 companies (Air Liquide, Air Products, Aluminium Duffel, Aperam, ArcelorMittal, Arlanxeo Belgium, Aurubis Belgium, BASF Antwerpen, Bayer Agriculture, Beaulieu International Group, Borealis, Brussels Airport Company, Covestro, Dow Belgium, Etex, Evonik Antwerpen, Glaxosmithkline Biologicals, Google, Ineos, Infrabel, Inovyn Belgium, Janssen Pharmaceutica, Kaneka Belgium, Kronos, Lanxess, Nippon Gases Belgium, Nippon Shokubai Europe, NLMK Belgium, Nyrstar Belgium, Oleon, Pfizer, Proxioms, Sol, Solvay, Tessenderlo Group, Thy-Marcinelle, Total Petrochemicals & Refining, UCB Pharma, Umicore, Unilin, Vynova and Yara). Together they represent over 80% of industrial electricity and natural gas consumption in Belgium and some 230.000 industrial jobs.*

the extreme changes in market conditions do not lead to missing money (if any), even after participation to the CRM, while ensuring that overall costs remain low and windfall profits avoided for those participants without any impact from the changing market conditions for fuel costs.