

Decision regarding the CTT request to deduct records referring to shipments of priority and registered mail for the purpose of calculating quality of service indicators for January 2019

1. By determination of 12.07.2018¹, the *Autoridade Nacional de Comunicações* (the National Communications Authority - ANACOM) established, under the provisions of paragraph 1 of article 13 of Law No. 17/2012, of 26 April, in its current wording (Postal Law), the “Quality of service parameters and performance targets associated with the universal postal service provision for 2018-2020”, to be complied with by CTT - Correios de Portugal, S.A. (CTT), as the concessionaire for the provision of the universal postal service.
2. In accordance with paragraph 1 of article 7 of the aforementioned “Quality of service parameters and performance targets associated with the universal postal service provision for 2018-2020”, in the event of the occurrence of situations of force majeure or phenomena, the onset and evolution of which are clearly outside the control of CTT, and which has an impact on the quality of service provided by CTT, the latter may request, for the purpose of calculating the quality of service indicators (QSI), to deduct records for such periods of time and geographical flows.
3. Paragraph 2 of the same article establishes that situations of force majeure or phenomenon mentioned in paragraph 1, are deemed to mean “[...] unpredictable or insurmountable facts attributable to third parties or natural events, that are triggered, evolve, or effects which occur regardless of CTT's will and controlling ability, such as war or subversion, epidemics, cyclones, earthquakes, fire, lightning, floods, general strikes and any other similar events that may impair normal conditions of clearance, sorting, transport and distribution of postal items”.

¹ Available at: <https://www.anacom.pt/render.jsp?contentId=1457268>.

4. The request for activation of the deduction must be submitted in writing by CTT, duly substantiated, within 60 days of the date on which the events or phenomena took place, in accordance with paragraph 4 of article 7.
5. The decision whether to consider the request from CTT is incumbent upon ANACOM, under the terms of paragraph 5 of the same article 7, and it must be notified to CTT within 30 days of the date of receipt thereof. Any rejection of the request must be duly substantiated. Irrespective of the request for such deduction, CTT undertakes to seek out the best possible alternatives for the duration of situations mentioned in paragraphs 1 and 2 of article 7.
6. By letter dated 17.04.2019, CTT reported that the heavy vehicle which daily carries priority mail between the South and North Production and Logistics Centres (CPL-S and CPL-N, respectively) had a break-down on 23.01.2019, which prevented the arrival of the mail at the CPL-N at the scheduled time (04.25)².
7. CTT added that the contingency plan contracted with the carrier was immediately activated, which provides for the rapid replacement of the broken-down vehicle. Noting that the break-down occurred on a motorway, which did not allow the transfer of the freight to another vehicle, the action chosen was the replacement of the cab of the vehicle, with the freight remaining in the same trailer. According to CTT, due to the damage to the trailer's suspension, the operation to exchange cabs proved to be more complex, which required the dislocation of a specialized service team from Vila Nova da Rainha (Carregado area), which sorted out the vehicle at 08.45.
8. CTT mentioned that they monitor the various aspects of the contracting established with the postal road carriers on a monthly basis, in order to validate the transportation conditions contracted with them.
9. According to CTT, due to the anomalous situation registered by the said vehicle, the normal conditions for priority mail transport for the connection between the CPL-S and the CPL-N were considerably prejudiced on 23.01.2019, due to the significant delay in the arrival of the mail to the CPL-N (around 10.45), which made it impossible to carry

² CTT attached a communication from the subcontracted company that carries out this road link, stating that the said break-down (forced immobilization of the vehicle) occurred on 23.01.2019, at 03.50, on the A1 motorway, in the Condeixa-a-Nova area.

out the usual secondary network transport links to the Postal Distribution Centres (CDP) of the northern area served by the CPL-N, thus causing delays in the distribution of postal items, which had an impact on the quality of service performance in that region in the month of January.

10. CTT carried out exceptional routes for the secondary network for most CDPs on that same day, in order to minimize the impact of this situation on the quality of service and in order to recover as quickly as possible from the delay caused by this anomaly, and this accounted for 61.0% of the priority mail cassettes and 56.5% of the registered mail cassettes transported with delays, in order to enable their distribution through considering the means available in each CDP..
11. In view of the routing times for the transported mail, the transportation anomaly which took place on 23.01.2019, for reasons, according to CTT, beyond their control, affected the normal quality of performance of priority mail and registered mail, with the following origins and destinations and delivered on the following dates:
 - Originating from the Mainland: priority mail and registered mail consignments sent on 22 January, originating from the GE (Forwarding Group) 4, 5 and 6 of the RE (Forwarding Region) South and being sent to GE 1, 2 and 3 of RE North;
 - Originating in the Autonomous Regions of the Azores and Madeira: priority mail and registered mail consignments sent on 21 and 22 January, originating in GE 7 and 8 and being sent to GE 1, 2 and 3 of RE North.

Table 1 identifies the GE and RE, according to information reported by CTT.

Table 1 - List of Forwarding Groups and Regions

GE Code	GE Designation	RE Code	RE Designation
1	North	1	North
2	Porto	1	North
3	Centre 1	1	North
4	Centre 2	2	South
5	Lisbon	2	South
6	South	2	South
7	Madeira	3	South (Islands)
8	Azores	3	South (Islands)

Notes: GE – Forwarding Group; RE – Forwarding Region

Source: CTT letter, of 17.04.2019.

12. In this context, CTT, in asserting that the break-down of the transportation vehicle on 23.01.2019 qualifies as a situation of force majeure whose triggering and effects were outside its ability to control this, have requested, under the terms and for the purposes of article 7 of the “Quality of service parameters and performance targets associated with the universal postal service provision for 2018-2020”, that the impact of that situation be taken into consideration when calculating the QSI for January 2019, that is, to deduct the records referring to shipments of priority and registered mail identified above, directly affected by the significant delay observed on 23.01.2019 in the transport of priority mail from the CPL-S to the CPL-N, caused by a break-down of the transporting vehicle.

13. Thus:

- a) Considering the information communicated by CTT, through its letter of 17.04.2019.
- b) Considering that provided for in the said paragraphs 1 and 2 of article 7 of the “Quality of service parameters and performance targets associated with the universal postal service for 2018-2020”, established by determination of ANACOM on 12.07.2018.
- c) Considering that:
 - i) the anomaly verified in the transportation on 23.01.2019, according to CTT, affected the normal quality of performance of the sending of priority mail and registered mail;

- ii) according to point 5.2.2 of the EN 13850:2012 standard, an event may qualify as force majeure if it cumulatively³:
 - a) not be caused by the operators involved in the distribution and/or their subcontractors;
 - b) be unforeseeable;
 - c) be unavoidable,be a rare event and have a provable impact on several consecutive days of postal distribution;
- iii) with it being the case that the situations characterised in article 7, paragraph 2 of the determination of ANACOM of 12.07.2018 are listed as examples, and it cannot be ignored that all of these are used as an example of force majeure or phenomenon regarding a type of event whose “nature” is not comparable to the break-down of a vehicle, which can not be considered a “natural fact” in the same manner as “epidemics, cyclones, earthquakes, fire, lightning, floods” or even “a fact attributable to a third party” such as “acts of war or subversion” and “general strikes”, which produce effects regardless of CTT’s will and controlling ability;
- iv) the break-down of the transport vehicle occurred during normal operational execution, by a CTT subcontractor, and there was no force majeure event involved in this situation, and this event may not be qualified as force majeure;
- v) the break-down of the transport vehicle, although it is an uncertain event - to the extent that, in particular, it is not known when it will occur - is,

³ The English version of the Standard mentions the following:

“For an event to qualify as force majeure, the incident shall fulfil the following minimum requirements. It shall:

- *not be caused by the operators involved in the distribution and / or their subcontractors,*
- *be unforeseeable and,*
- *be unavoidable by them.*

It shall:

- *be a rare event,*
- *have a provable impact on several consecutive days of distribution. “*

nevertheless, a foreseeable event with a greater or lesser probability of occurrence, to the extent that CTT provided for contingency plans in the event that such situations were to occur;

- vi) thus, and recognizing that the company may not be able to anticipate exactly when, precisely, it will be confronted with the triggering of a break-down situation, it is unquestionable that it will be able to control its respective evolution and its effects;
 - vii) that is, the break-down in question is an operational risk that is part of the normal execution of the transport operational phase, which CTT must take into account in the risk management of its business, with it being incumbent on CTT to support this, such that the situation in question cannot be considered as a phenomenon the triggering and evolution of which are manifestly external to CTT's controlling ability,
- d) Considering that, by determination of 17.05.2019, notified to CTT on 20.05.2019, the Board of Directors approved the draft decision (DD) on CTT's request to deduct records referring to shipments of priority mail and registered mail for the purpose of calculating quality of service indicators for January 2019, which was submitted to a prior hearing of that company, in accordance with the provisions of articles 121 and 122 of the Code of Administrative Procedure, for a period of 20 business days;
- e) Considering CTT's statement under the scope of the said prior hearing, the analysis of which is contained in the "CTT prior hearing report on the draft decision regarding the request to deduct records referring to shipments of priority mail and registered mail for the purpose of calculating quality of service indicators for January 2019",

considering that the CTT period for notification ends today and in the absence of the Chairperson of the Board, I hereby decide, as a matter of urgency, that under the scope of paragraph 3 of Article 29 of ANACOM's Statutes, approved by Decree-Law No. 39/2015, of 16 March, through the exercise of the attributions and powers conferred by points h) and i) of paragraph 1 of article 8 of the said Statutes, under the scope of paragraph 5 of article 7 of the "Quality of service parameters and performance targets associated with the universal postal service for 2018-2020", established by determination of ANACOM on

12.07.2018, and through the exercise of the attributions and powers conferred by point b) of article 26 of ANACOM's Statutes, I hereby decide to:

1. Approve the "CTT prior hearing report on the draft decision regarding the request to deduct records referring to shipments of priority mail and registered mail for the purpose of calculating quality of service indicators for January 2019", which forms an integral part of this decision;
2. Dismiss CTT's request to deduct records referring to shipments of priority mail and registered mail affected by the break-down of the carrier vehicle, verified on 23 January 2019 in the transport of the priority mail from the CPL-S to the CPL-N.

Under the terms of paragraph 3 of article 29 of ANACOM's Statutes, this decision shall be subject to ratification at the next ordinary meeting of the Board of Directors.