

Decision
on the
Complaint submitted by CTT concerning the determination that established
the universal postal service pricing criteria for the 2018-2020 period

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1. Framework

The Management Board of Autoridade Nacional de Comunicações (ANACOM) approved, by determination of 11.01.2018, a draft decision (DD) on the universal postal service pricing criteria for the 2018-2020 period, which was submitted to: (i) a hearing of consumer organisations, pursuant to article 43 of the Postal Law¹; a hearing of CTT – Correios de Portugal, S.A. (hereinafter CTT, company or Complainant), under articles 121 *et seq* of the Administrative Procedure Code (APC); and (iii) a public consultation procedure, provided for in article 9 of the Postal Law.

By determination of 12.07.2018², the Management Board of ANACOM approved the universal postal service pricing criteria for the 2018-2020 period, except for the methodology for forecasting the traffic of the basket of non-reserved services for the same triennium³, which was submitted to: a hearing of CTT, under articles 121 *et seq* of APC; (ii) a hearing of consumer organisations, pursuant to article 43 of the Postal Law; and (iii) a public consultation procedure, provided for in article 9 of the Postal Law.

CTT was notified of this determination on 18.07.2018⁴.

Having the hearing and consultations on the DD concerning the methodology for forecasting the traffic of the basket of non-reserved services for the 2018-2020 triennium been held, the Management Board of ANACOM, by determination of 05.11.2018⁵, approved:

- a) *The methodology for forecasting the traffic of the basket of non-reserved services for the 2018-2020 triennium, (...) and, consequently, as far as it was concerned, the*

¹ Law No. 17/2012, of 26 April, as it stands.

² In the scope of which ANACOM took into account contributions received during procedures to which the DD approved on 11.01.2018 was submitted, the analysis of which is included in the “Report of the public consultation and prior hearing on the draft decision concerning the universal postal service pricing criteria for the 2018-2020 period”, which is an integral part of the decision, and which was also approved in the same determination of 12.07.2018.

³ It was stressed, in page 53 of that decision, that only the maximum price change applicable to the basket of non-reserved services [for 2019 and 2020] was dependent on the final decision to be taken on the said methodology for forecasting traffic of this basket for the 2018-2020 triennium.

⁴ Through letter with ref. ANACOM-S012015/2018, delivered to CTT on that date, by protocol.

⁵ In the scope of which ANACOM took into account contributions received during procedures to which the methodology for forecasting the traffic of the basket of non-reserved services for the 2018-2020 triennium was submitted, the analysis of which is included in the “Report of the public consultation and prior hearing on the draft decision concerning the methodology for forecasting the traffic of the basket of non-reserved services for the 2018-2020 triennium”, which is an integral part of the decision, and which was also approved in the same determination of 05.11.2018.

maximum annual price change applicable to the basket of non-reserved services, for each of the years 2019 and 2020, (...);

- b) *The publication of the consolidated version of the decision on the universal postal service pricing criteria for the 2018-2020 period, as well as of the referred criteria (...), where:*
- i) *Chapter 9 thereof integrates amendments (...) approved [through the same determination of 05.11.2018] to the methodology for forecasting the traffic of the basket of non-reserved services, for the 2018-2020 period (pages 38 to 40 of the consolidated version) as well as to the calculation of the maximum price change applicable to the basket of non-reserved services for 2019 and 2020 (pages 41 and 42 of the consolidated version);*
 - ii) *Article 5, paragraph 1 c) of the annex, on the definition of the traffic correction factor (TCF), reflects the new forecasts for the change of the traffic of the basket of non-reserved services in the 2018-2020 period, which are now -6.43% in 2018, -3.42% in 2019 and -3.90% in 2020, instead of -4.21% in 2018, -3.74% in 2019 and -3.13% in 2020;*
 - iii) *Article 11, paragraph 2 of the annex, on the maximum price change applicable to the basket of non-reserved services in 2019 and 2020, specified that the formula to be applied would be $CPI + CPICF - 0.25\% + TCF$, instead of $CPI + CPICF - 1.33\% + TCF$.⁶*

CTT was notified of this determination on 09.11.2018⁷.

By email dated 30.11.2018, CTT presented a complaint, under article 184 *et seq* of the APC, having requested that the *consolidated version of determination of 12.07.2018, with the review of chapter 9 as well as of articles 5, paragraph 1, and 11, paragraph 2, of the respective annex, on the subject of the methodology for forecasting the traffic of the basket of non-reserved services (hereinafter "Pricing Determination") was amended so that:*

⁶ The definitions of CPI (inflation expected for each year), CPICF (inflation correction factor) and TCF (traffic correction factor) are set out in article 5, paragraph 1, of the annex to the consolidated version of the decision.

⁷ Through letter with ref. ANACOM- S019204/2018, delivered to CTT on that date, by protocol.

- a) The pricing rule to be applied to the correspondence, editorial mail and parcels basket of services, including non-priority/standard mail up to 20 g, was $\text{CPI} + \text{CPICF} - 0.04\% + \text{TCF}$, for the 2019-2020 period; and
- b) The pricing rule applicable to reserved services, also for the same 2019-2020 period, was $\text{CPI} + \text{CPICF} - 4.2\% + \text{TCF}$.

This complaint (hereinafter the “Complaint”) is described and analysed below.

2. CTT’s complaint

Subject-matter:

CTT’s complaint focuses on the *position adopted by ANACOM* as regards the calculation of:

- a) Maximum annual price change of the correspondence, editorial mail and parcels basket of services allowed for 2019 and 2020, namely in pages 41 and 42 of the Pricing Determination (determination of 12.07.2018), and in article 11, paragraph 2 of the respective annex;
- b) Minimum price reduction of reserved services, defined in pages 48 and 49 of the Pricing Determination and in article 13, paragraph 1 of the respective annex.

CTT justifies its complaint based on the fact that ANACOM, in that decision, failed to take into account updated inflation figures presented in the State Budget Report for 2019 (SBR2019), published on 15.10.2018, which in its perspective brought about an obvious error in the assumptions of the Pricing Determination or, at the very least, a clear assessment error, leading the maximum annual price change of the basket of non-reserved services ($\text{CPI} - 0.25\%$) for the 2019-2020 period to be miscalculated and not in touch with reality.

CTT also takes the view that in the definition of the pricing rule of the basket of reserved services, ANACOM should have taken into consideration the updated inflation figures set out in SBR2019, thus the failure to take these figures into account also entails an obvious error in the assumptions of the Pricing Determination or, at the very least, a clear assessment error.

This error (or errors) make the Pricing Determination *illegal*, in CTT's opinion, or, at the very least, they go greatly against the objectives that should have guided ANACOM's action in the scope of the establishment of universal postal service pricing criteria.

For the reasons set out above, CTT considers that the Pricing Determination must be amended and adjusted so that the latest inflation figures are taken into consideration.

Grounds for the Complaint:

According to the Complainant, the pricing rule that applies to the correspondence, editorial mail and parcels basket of services seeks to achieve two goals: (i) to limit the overall margin of services concerned, through the maximum price change of services included in the basket and (ii) encourage an efficient provision of the universal service, CTT being set incentives to minimize its costs (cf. page 35 of the Pricing Determination).

CTT adds that, since it was impossible to predict with total certainty the relevant parameters for the establishment of the formula and the figure of the maximum annual price change, ANACOM took into consideration several estimates (cf. chapter 9 of the Pricing Determination - pages 34 to 47), namely a cost estimation, a traffic estimate and an inflation estimate.

CTT goes on, declaring that according to the exercise carried out by ANACOM, the average annual price change that counterbalances the development of unit costs is 1.41%, thus this Authority decided that the average annual price change to be applied for the 2019-2020 period should be CPI - 0.25% (cf. page 41 and table 14 of the Pricing Determination).

CTT recalls that, to calculate the (estimated) inflation figure, ANACOM refers, in pages 40 and 41 of the Pricing Determination, that it considered:

- a) for 2018, the average of forecasts provided by the State Budget Report for 2018 (SBR2018), Banco de Portugal (BdP), the European Commission (EC), the Organisation for Economic Co-operation and Development (OECD) and the International Monetary Fund (IMF), that is, 1.34%;
- b) for 2019, the average of forecasts provided by BdP, EC, OECD and IMF, that is, 1.68%;
and
- c) for 2020, the inflation forecast by BdP and IMF, that is, 1.65%.

This resulted, for the 2018-2020 period, in an average inflation by 1.56% per year, and, for the 2019-2020 period, in an average inflation by 1.66% per year.

The Claimant further mentions that ANACOM, in page 42 of the Pricing Determination, refers that the calculation of "X" of the figure of the annual price change only took into account the average inflation figures for 2019 and 2020, i.e. 1.66%, which produces a figure for X of 0.25% [corresponding to the average annual change in unit profits to maintain the margin (1.41%), minus the average inflation figure for 2019 and 2020 (1.66%)].

The company believes that ANACOM failed to take into consideration, with any apparent justification, the inflation figure forecast in SBR2019, published on 15.10.2018, which should and could have been considered in the *final adoption* of the Pricing Determination (cf. document No.1 attached by CTT to its Complaint).

CTT stresses that the SBR2019 refers that:

- a) *Inflation, measured by CPI, shall reach 1.3% in 2018 and 2019, reflecting the maintenance of moderate external and internal inflationary pressures [cf. Macroeconomic Scenario (chapter 11.3.2., pages 61 and 62)];*
- b) 1.3% is the figure estimated for 2018 and forecast for 2019 for the CPI change in *Table II.3.3. 2018-2019 Macroeconomic Scenario* (vide Figure 1).

Figure 1 – 2018-2019 Macroeconomic Scenario set out in SBR2019

Quadro II.3.3. Cenário macroeconómico 2018-2019

(taxa de variação, %)

	2016	2017	2018 ^(e)	2019 ^(p)	2018 ^(p)	2019 ^(p)
	INE		OE 2019		FE 2018-22	
PIB e componentes da despesa (taxa de crescimento homólogo real, %)						
PIB	1,9	2,8	2,3	2,2	2,3	2,3
Consumo privado	2,4	2,3	2,3	1,9	2,0	2,0
Consumo público	0,8	0,2	1,0	0,2	0,7	-0,1
Investimento (FBCF)	2,3	9,2	5,2	7,0	6,2	7,0
Exportações de bens e serviços	4,4	7,8	6,6	4,6	6,3	4,8
Importações de bens e serviços	4,7	8,1	6,9	4,8	6,3	5,0
Contributos para o crescimento do PIB (pontos percentuais)						
Procura interna	2,0	3,1	2,7	2,5	2,5	2,6
Procura externa líquida	-0,2	-0,3	-0,3	-0,3	-0,2	-0,2
Evolução dos preços						
Deflador do PIB	1,8	1,5	1,4	1,4	1,4	1,4
IPC	0,6	1,4	1,3	1,3	1,4	1,4
Evolução do mercado de trabalho						
Emprego (ótica de Contas Nacionais)	1,6	3,3	2,5	0,9	1,9	1,1
Taxa de desemprego (%)	11,1	8,9	6,9	6,3	7,6	7,2
Produtividade aparente do trabalho	0,3	-0,5	-0,2	1,3	0,5	1,2
Saldo das balanças corrente e de capital² (em % do PIB)						
Capacidade/Necessidade líquida de financiamento face ao e	1,0	1,1	1,0	1,2	1,6	1,8
- Saldo da balança corrente	0,1	0,2	0,0	0,0	0,7	0,7
da qual saldo da balança de bens e serviços	1,1	0,8	0,7	0,7	1,0	1,0
- Saldo da balança de capital	0,9	0,9	1,0	1,2	0,9	1,1

(e) - estimativa, (p) - previsão.

Fontes: INE e Ministério das Finanças.

Source: Complaint and SBR2019.

CTT takes the view that the definition and calculation of the figure of the annual price change requires always that figures entered in the SBR for the inflation expected for each year are taken into consideration, where available, for the following reasons:

- a) First of all, because the figure forecast by the Government, and as such entered in the SBR for each year, is the most relevant source for the purpose of the calculation of the maximum annual price change for the correspondence, editorial mail and parcel basket of services, namely in order to meet criteria concerning the CPI and CPICF.

According to page 44 of the Pricing Determination and article 5, paragraph 1 a) of the respective annex, CPI corresponds to *the inflation expected for each year that is*

officially forecast by the Government and as such entered in the State Budget Report in each year, as a rule published in October of the year preceding the application of the prices. It follows from page 45 of the Pricing Determination and article 5, paragraph 1 b) of the respective annex that CPICF corresponds to the difference between the inflation figure forecast in the State Budget Report of a given year for the preceding year, and the inflation figure that had been originally forecast for the preceding year, under the preceding paragraph (point a)).

As such, it is clear for CTT that the SBR for each year is the most credible and reliable source of information for the establishment of CPI and CPICF figures, and this should also be the source for the establishment of the formula and the figure of the annual price variation of the basket of non-reserved services. Besides, according to CTT, ANACOM itself takes this source into account, in the light of what is referred in page 40 of the Pricing Determination for 2018.

In the opinion of the company, estimates provided by other bodies should only be used where Government information is not available, which is *in line with the economy and substance* of the Pricing Determination.

Bearing in mind that SBR2019 was published on 15.10.2018, CTT fails to understand why ANACOM chose not take this information into account when calculating inflation figures for the 2018-2020 period.

- b) Secondly, CTT mentions that in the scope of the price proposal it is required to present every year to ANACOM (cf. article 8 of the Pricing Determination), the company must consider the official figures forecast by the Government and entered in the SBR in each year.

CTT adds that, according to pages 44 and 45 of the Pricing Determination and in article 5, paragraph 1 a) and b) of the respective annex, only where the said SBR is not available at the date of submission of the price proposal by CTT, the company is entitled to calculate CPI according to the inflation forecast by BdP in its latest Economic Bulletin at that date.

CTT believes that the fact that it is required to use inflation figures entered in the SBR is another reason that supports the argument that this figure should be considered in the establishment of the formula and the figure of the annual price variation.

In fact, the Complainant fails to see any reason that justifies why ANACOM does not take the inflation figure entered in the SBR into account when establishing the formula, while CTT is required to use this source when such formula is implemented.

CTT believes that the alignment of factors that support the operational parameters of the universal postal service pricing rule is not only desirable but also a requirement of the principles of regulatory predictability and certainty.

- c) Thirdly, CTT stresses that the use of more recent forecasts for the inflation figure has already been determined by ANACOM to the company.

It refers that this was the case, for example, when the 2016 universal service price proposal was submitted (cf. document No.2 attached to the Complaint). It explains, as follows from that document:

- i) That the company presented, on 09.12.2015, a price proposal for 2016, having considered, given that the SBR2016 was not available, the inflation figure forecast by BdP for that year, as this was at the time the latest forecast for the inflation in Portugal carried out by an official Portuguese body;
- ii) In its response, dated 23.12.2015, ANACOM clarified that *“having Banco de Portugal published on 09.12.2015, in its Economic Bulletin of December 2015, the most recent forecast for the referred inflation figure corresponding to 1.1%, (...) under paragraph 2 of article 2 (on the concept of CPI) of the universal postal service pricing criteria (...) the referred figure of 1.1% must be used for CPI purposes in 2016.*

CTT thus concludes that, according to ANACOM, the application of the rule of maximum price change should consider the most recent forecasts for the inflation figure. CTT sees no valid reason why the same principle should not be followed when the formula and the figure of the annual price change is established.

CTT highlights that the figure forecast for 2020, by IMF, was also updated on 08.10.2018, to 1.8%, with the publication of *FMI - World Economic Outlook* (October 2018). According to CTT, the figure forecast by IMF for the inflation in Portugal in 2020 will only be available in the Excel DB that supports the report drawn up by IMF. This report only includes forecasts for this indicator for 2018, 2019 and 2023.

- d) Fourthly, and lastly, CTT does not believe it is acceptable to assume that the failure to consider the figure of inflation included in the SBR2019 may be later addressed via the action of the CPICF.

According to the Complainant, this correction should only apply in case of a specific price proposal presented by the company, and should not be used to correct a formula and the figure of the annual price change underlying the pricing rule for the basket of non-reserved services. In its opinion, if the formula is wrongly defined, this will be reflected negatively throughout the whole 2019-2020 period, to the clear detriment of CTT.

CTT adds that, by its very definition, the CPICF is not able to correct this mismatch. The CPICF corresponds only to the difference between the inflation figure forecast in the SBR of year n for year $n-1$, and the inflation figure that had been forecast for year $n-1$ in the State Budget for that year. This means that the CPICF allows only the correction of deviations between the inflation projection for a given year and the inflation that had been forecast for that same year, but only of figures presented in the SBR in each year - thus the CPICF does not allow the correction of differences between inflation projections made by other bodies for a given year and the inflation figure presented in the SBR for that year.

In brief, while CTT acknowledges that to render the universal postal service pricing rule operational, some estimates and projections must be taken into account (as is the case with traffic), the company also believes that where *more official* elements, such as the SBR, are made available by national bodies, they have to be taken into account by ANACOM.

As such, according to CTT, by reference to 15.10.2018, ANACOM should have taken into consideration the following latest inflation forecasts for Portugal:

Table 1 - Inflation forecasts for Portugal

Body	2018	2019	2020	Source
State Budget Report for 2019 (SBR2019)	1.30%	1.30%	-	Pg. 61, SBR2019 (Oct18)
Banco de Portugal (BdP)	-	-	1.40%	Pg. 9, BdP – Economic Bulletin (Jun2018)
International Monetary Fund (IMF)	-	-	1.80%	Page 160, IMF - World Economic Outlook (out18). 2020: 1.80%, available only in Excel DB, not in the report
Average annual figure	1.30%	1.30%	1.60%	1.45%*

* Arithmetic mean of 2019 and 2020.

Source: Complaint.

According to the company, bearing in mind these inflation forecasts for 2019 and 2020, all other traffic and cost evolution estimates remaining equal, the figure of the annual price change of the basket of non-reserved services for the 2019-2020 period would be as follows in Table 2:

Table 2 - Price change for the period from 01.01.2019 to 31.12.2020 (non-reserved services)

Variable	Year		
	2018	2019	2020
Inflation	1.30%	1.30%	1.60%
Traffic change	-6.43%	-3.42%	-3.90%
Change in total costs (=50% cost reduction + 25% traffic change)	-2.74%	-1.98%	-2.10%
Change in unit costs	3.95%	1.49%	1.87%
Annual average change in profits to maintain the margin		1.41%	
Price change in 2018	4.5%	-	
Price change (CPI - X) for the period 2019-2020 *	-	CPI – 0.04%	

* The calculation of "X" only took into account the average inflation for 2019 and 2020, i.e. inflation = 1.45%.

Source: Complaint.

It follows that, instead of the CPI - 0.25% price change for the 2019-2020 period, as set out in the Pricing Determination, this change, for the same period, should be CPI - 0.04%, taking into consideration the latest forecasts for Portugal for the 2019-2020 period.

CTT adds that, for the same reason, the same reasoning applies in the case of reserved services, referring *mutatis mutandis* to the above.

CTT goes on to declare that, according to page 49 of the Pricing Determination (specifically footnote 57 thereof), ANACOM failed to take into consideration, in the definition of the figure of CPI - 4.4% annual price reduction, the latest inflation forecasts for Portugal for the 2019-2020 period.

Taking into account the above-mentioned inflation forecasts for the period concerned, all other traffic and cost evolution estimates referred in the Pricing Determination remaining equal, CTT believes that the figure of the annual price change of reserved services for the 2019-2020 period would be as follows in Table 3:

Table 3 - Price change for the period from 01.01.2019 to 31.12.2020 (reserved services)

Variable	Year		
	2018	2019	2020
Inflation	1.30%	1.30%	1.60%
Traffic change	-12.5%	-14.0%	-15.0%
Change in total costs (=50% cost reduction + 25% traffic change)	-4.3%	-4.6%	-4.9%
Change in unit costs	9.4%	10.9%	11.9%
Annual average change in profits to maintain the margin		-2.76%	
Price change in 2018	-0.5%	-	
Price change (CPI - X) for the period 2019-2020*	-	CPI – 4.2%	

* The calculation of "X" only took into account the average inflation for 2019 and 2020, i.e. inflation = 1.45%.
Source: Complaint.

As such, CTT considers that, instead of the CPI - 4.4%% price change for the 2019-2020 period, as set out in the Pricing Determination, this change, for the same period, should be CPI - 4.2%.

CTT believes that the fact that the latest inflation forecasts were not incorporated in the Pricing Determination affects them, as the company will be required in the next two years to apply rules and formulas that are out of touch with reality from the outset.

As a last note, CTT further stresses that it was not able to assess these aspects in previous moments, given that the new inflation forecasts were not yet available on the date its comments to the draft decisions that preceded the Pricing Determination were submitted.

CTT's conclusions and request:

The Complainant concludes, in the light of the above, that the Pricing Determination, specifically the formula and figure of the annual price change for the 2019-2020 period (both for non-reserved services and for reserved services), is based on erroneous assumptions or, at the very least, incurs in a clear assessment error.

As referred earlier, in CTT's perspective, the Pricing Determination estimates the inflation figure failing to take into account the inflation figures forecast in the SBR2019, although this source consists, under the very *terms, economy and substance* of the decision adopted by ANACOM, in the official and most reliable source of information on the inflation figure to be taken into consideration for the purpose of the pricing rule.

The referred Determination fails also - CTT believes - to consider the latest inflation forecasts of other official bodies.

CTT takes the view that the failure to take the latest inflation forecasts into account is not only incoherent with the very terms of the Pricing Determination and with ANACOM's previous practise, but also brings about a manifest error in the approval of the Determination, thus entailing a clear violation of the basic principles of administrative action - namely the principles of proportionality (adequacy in particular) and concern for the factual situation.

CTT believes that, by failing to consider, in the Pricing Determination, the latest inflation figures available *on the date of approval of this decision (05.11.2018)*, ANACOM violated the referred principles, determining maximum price change formulas and figures supported on clearly insufficient or wrong assumptions.

These aspects show, according to CTT, that not only is the Pricing Determination *illegal*, but also inconvenient, due to its non-conformity with the *regulatory objectives of certainty, stability and incentive* to an efficient provision of the universal service, which in this matter are intended to be pursued.

Therefore, CTT supports that the Pricing Determination should be amended:

- a) In the part that establishes the formula and figure of the annual price change (pages 40 to 42), as well as in the respective annex (articles 11, paragraph 2) of the basket of correspondence, parcel and editorial mail services, including non-priority/standard mail up to 20 g (article 12, paragraph 1); and
- b) In the part that establishes the formula and figure of the annual price change (pages 48 to 50), as well as in the respective annex (articles 13, paragraph 1) of reserved services,

so that in both cases the latest inflation forecasts for the 2018-2020 period, namely those included in the SBR2019, are taken into consideration.

In the light of the above, and based on these arguments, CTT request that the submitted Complaint is considered well founded and that, consequently, the Pricing Determination is amended so that (i) the pricing rule to be applied to the correspondence, editorial mail and parcels basket of services, including non-priority/standard mail up to 20 g, is $CPI + CPICF - 0.04\% + TCF$, for the 2019-2020 period; and (ii) the pricing rule applicable to reserved services is $CPI + CPICF - 4.2\% + TCF$, also for the 2019-2020 period.

3. Stakeholder consultation

Under article 192, paragraph 1, of the APC, when a complaint is presented, the body with authority for the decision is required to notify those who may be affected by its approval so that the latter may claim against as the request and respective grounds, within 15 working days, as deemed to be fit.

In the case under consideration, the approval of the complaint presented by CTT affects universal postal service pricing criteria, thus it could affect postal service users in general, including consumers and non-consumers. It was thus concluded that this was the range of counter-stakeholders to notify in compliance with the above-mentioned provision of the APC.

Given the large number of stakeholders and in the light of provisions on notifications set out in point e) of paragraph 1 and in paragraph 4, both of article 112 of the APC, ANACOM

promoted the notification of counter-stakeholders through a notice published in the Official Gazette, in a national newspaper and at its website.

In parallel, consumer organizations that had been heard at the time of the decision approval procedure now complained against, were also notified of the complaint, as counter-stakeholders, in accordance with article 43 of the Postal Law.

As such:

- a) On 14.12.2018, ANACOM disclosed at its website the Complaint presented by CTT, under articles 184 *et seq* of APC;
- b) On 17.12.2018, a notice was published in the newspaper “Público”;
- c) On 20.12.2018, Notice No. 19155/2018 was published in Series II of the Official Gazette No. 245/2018, of 20 December, thus being ensured that information was made available to all stakeholders, who were given 15 working days - from the date of publication of the last notice (through one of the means indicated) - if they so wished, to assess CTT’s request and respective grounds, as deemed to be fit, under article 192, paragraph 1, of APC.

In the light of the above, further to the publication of the last notice - Notice No. 19155/2018, published in Series II of the Official Gazette No. 245/2018, of 20 December - stakeholders were required to send their comments up to 14.01.2019.

This information - on the disclosure of the last notice and consequent deadline for submitting comments - was also disclosed by ANACOM at its website, on 20.12.2018.

Following the expiry of the referred period, it was found that no comments had been received.

4. Analysis

As addressee of the decision complained against, CTT is a direct stakeholder, and has legitimacy to present the Complaint under consideration.

Optional challenges of administrative acts - as it the case of the Complaint submitted by CTT - do not have, as a rule, a suspensive effect on the decision complained against.

This is the case here. The Complaint submitted by CTT only has a devolutive effect, which requires that the decision is reassessed by the competent body - ANACOM -, although its effectiveness is not automatically suspended (vd. article 189, paragraph 2 of the APC).

Where a different deadline is not determined by law - which is the case here - the time-limit for lodging a complaint is 15 working days, from the date on which CTT was notified of the decision that is the subject-matter of the complaint (articles 191, paragraph 3 and 188, paragraph 1, of APC).

CTT complain against the Pricing Determination adopted by ANACOM, as it believes that the Authority should have taken into account the latest inflation forecasts, specifically:

- a) The inflation figures provided for in SBR2019, published on 15.10.2018; and
- b) The latest inflation forecasts from other official bodies, in this case the figure forecast for 2020 by IMF, updated on 08.10.2018⁸.

And, in this context, CTT complains against a change in the methodology followed to calculate the inflation change estimate for the 2018-2020 period, set out in the Pricing Determination, as clearly follows from point 45 of the Complaint.

In fact, it follows from point 45 of the Complaint that CTT believes that, for 2018 and 2019, only inflation forecasts provided for in the respective SBR of each year should be considered, not the most recent estimates of several sources that, according to the methodology set out in that determination - which CTT did not challenge in its assessment of 11.01.2018 that preceded it - are required to be taken into consideration (namely, BdP, EC, OECD, IMF and SBR)⁹.

As such, in its final application, CTT request that the Complaint submitted is considered well founded and that, *consequently, the Pricing Determination is amended so that (i) the pricing rule to be applied to the correspondence, editorial mail and parcels basket of services, including non-priority/standard mail up to 20 g, is **CPI + CPICF - 0.04% + TCF**, for*

⁸ International Monetary Fund publication. 2018. *World Economic Outlook: Challenges to Steady Growth*. Washington, DC, October, 08.10.2018.

⁹ CTT considered for 2020 the same sources that have been determined in the methodology set out in the determination of 12.07.2018, using however the latest available forecasts.

*the 2019-2020 period; and (ii) the pricing rule applicable to reserved services is **CPI + CPICF - 4.2% + TCF**, also for the 2019-2020 period.*

However, contrary to what CTT implies (cf. for example point 60. of the Complaint), the Pricing Determination was adopted on 12.07.2018, not on 05.11.2018. In fact, it was on 12.07.2018 that the universal postal service pricing criteria were approved for the 2018-2020 period, and only the implementation of the methodology for forecasting the traffic of the basket of non-reserved postal services for the same triennium was relegated to a subsequent time (this methodology was submitted on 12.07.2018 to the prior hearing of CTT, to a hearing of consumer organisations and to a public consultation, under articles 121 *et seq* of APC, and articles 43 and 9 of the Postal Law, respectively).

In the referred determination adopted on 12.07.2018, ANACOM took into account contributions received in the scope of the prior hearing of CTT, the hearing of consumer organizations and the public consultation, under articles 121 *et seq* of APC, and articles 43 and 9 of the Postal Law, respectively, to which the respective DD, approved by determination of 11.01.2018, had been submitted - the analysis of which is set out in the "Report of the public consultation and prior hearing on the draft decision concerning the universal postal service pricing criteria for the 2018-2020 period", which was approved on 12.07.2018 and which is an integral part of that decision.

It should also be recalled that the Pricing Determination left open the methodology for forecasting the traffic of the basket of non-reserved postal services for 2018-2020, given that:

- a) ANACOM took the view that the period used in the DD of 11.01.2018 for the traffic series should be reviewed, as a change in the trend of traffic evolution was registered (from 2008 onwards, the fall of postal traffic is continuous and sharper);
- b) Further to ANACOM's decision of 11.03.2009 on the obligation to report statistical data of postal services, the way how CTT reported traffic information was different from the methodology adopted up to the referred decision;
- c) It was also considered that quarterly data reported by CTT as from 2009 should be taken into consideration, instead of annual data, in order to (i) increase the number of observations feeding the forecast model to be used and (ii) to cover the effect of the seasonal character of traffic, which is manifested on a quarterly basis.

This means that a specification of statistical aspects related to traffic estimation for the 2018-2010 period was at stake, all other issues having been definitely addressed in the scope of the Pricing Determination.

In fact, in the Pricing Determination, adopted on 12.07.2018, ANACOM clearly stated:

- a) That the Authority approved the pricing criteria to be met by CTT for postal services that comprise the universal service in the 2018-2020 triennium;
- b) Except for the methodology for forecasting the traffic of the basket of non-reserved services for the 2018-2020 triennium; and
- c) that [only] the maximum price change applicable to the basket of non-reserved services [for 2019 and 2020] was dependent on the final decision to be taken on the methodology for forecasting traffic of this basket for the 2018-2020 period,

which makes it clear that all aspects of the universal postal service pricing criteria, apart from the methodology for forecasting the traffic of the basket of non-reserved services for the 2018-2020 triennium and the maximum price change applicable to the basket of non-reserved services, in what depended on that methodology, had already been defined on 12.07.2018.

When establishing the price formula and change of the basket of non-reserved postal services, as well as the price formula and change of the basket of reserved postal services, allowed for 2019 and 2020, ANACOM took into consideration estimates of cost, traffic and inflation evolution, for the period from 2018 to 2020, based on elements available at the time.

As such, through determination of 12.07.2017, ANACOM approved the final decision on that subject, that is, it established, in their final form, the universal postal service pricing criteria for the 2018-2020 period, as well as sources to be considered in order to obtain the estimates that would be taken into account, except only for the methodology for forecasting the traffic of the basket of non-reserved services for the same triennium (which was submitted to the above-mentioned hearing and consultation procedures).

This means that, in the determination of 12.07.2018, ANACOM left only to approve, in its final form, the referred methodology, as well as what was dependent on it, namely:

- a) The traffic evolution estimate of non-reserved postal services for the 2018-2020 period was not approved, as it depended on the approval, in its final form, of the methodology for forecasting the traffic of the basket of non-reserved services;
- b) The final figure of the maximum price change applicable to the basket of non-reserved services [in 2019 and 2020]¹⁰ was also not approved, as it depended also on the approval, in its final form, of the methodology for forecasting the traffic of the basket of non-reserved services¹¹, as such methodology affects the definition of the final figure of each of the parameters of the price change formula for those services.

As such, for the purpose of the determination of the universal postal service pricing criteria for the 2018-2020 period, the following issues were approved (in their final form) through determination of 12.07.2018:

- a) Inflation evolution estimates for the 2018-2020 period, including the respective calculation methodology and sources considered, applicable both to prices of the basket of reserved postal services and to prices of the basket of non-reserved postal services; and
- b) The formula and allowed change for prices of the basket of reserved postal services in 2019 and 2020¹² (as well as estimates of traffic and cost evolution for reserved postal services in the 2018-2020 period).

Having CTT been notified in an ordinary manner, on 18.07.2018¹³, of the referred decision of 12.07.2018 - which, as clearly and unambiguously results¹⁴ from the above, established the estimates (including in this scope, the calculation methodology and sources to be taken

¹⁰ Cf. noted in page 53 of the decision of 12.07.2018.

¹¹ Bearing in mind that the approval of the methodology for forecasting the traffic of the basket of non-reserved services for 2018-2020 depends on the approval of the estimate of traffic evolution of non-reserved postal services for the 2018-2020 period, which on its turn is dependent on the approval of the estimate of cost evolution of non-reserved postal services for the 2018-2020 period, which affects the definition of the final figure of each of the parameters of the formula, and, consequently, the definition of the final figure of the change allowed for prices of non-reserved postal services in 2019 and 2020.

¹² As well as in 2018.

¹³ Through letter with ref. ANACOM-S012015/2018, delivered to CTT on that date, by protocol.

¹⁴ It also clearly follows from the "Report of the public consultation and prior hearing on the draft decision concerning universal postal service pricing criteria for the 2018-2020 period", of 12.07.2018, which is an integral part of the decision of 12.07.2018, that only the methodology for forecasting traffic of the basket of non-reserved postal services for the 2018-2020 triennium was not approved in its final form in that decision (vd. Chapter 3.3, end of page 31, entitled "Traffic estimate of the basket of non-reserved services", and Chapter 4, entitled "Conclusion").

into account) of inflation evolution in the 2018-2020 period to be considered in the calculation of the maximum price change of the referred baskets of reserved and non-reserved postal services - the deadline by which it was required to challenge that decision expired on 08.08.2018.

Having been presented on 30.11.2018, the Complaint under consideration - which, as highlighted above, does not seek a mere data update, but a change in the methodology and sources to be considered in the determination, was submitted after the deadline laid down by law, thus it is deemed to be untimely.

In fact, and as CTT is aware, in the determination of 05.11.2018, ANACOM merely approved the methodology for forecasting the traffic of the basket of non-reserved services for the 2018-2020 triennium, and consequently, in what on it was dependant, the maximum price change applicable to the basket of non-reserved services in 2019 and 2020, as well as the publication of the consolidated version of the decision establishing the universal postal service pricing criteria for the 2018-2020 period¹⁵ (intended solely to aggregate in a single document the information already defined (and stabilized) on 12.07.2018, and the one that resulted from the implementation of the methodology to be used for forecasting traffic of the basket of non-reserved postal services for the 2018-2020 triennium, determined on that occasion).

Therefore, the approval of the publication of the consolidated version clearly is not, nor could it be, deemed to be a new approval of universal postal service pricing criteria and of all matters covered by such version.

Moreover, the decision under consideration set pricing criteria for a multiannual period, on the basis of estimates (in this specific case, estimates of inflation, traffic and costs future evolution), which, precisely on account of being estimates, are likely to be updated. However, such updates do not dictate the amendment of decisions adopted on the basis of the referred estimates, in which case it would hardly be possible to reach a timely final decision in this context, which would also be to the detriment of CTT itself, as the company would not be able to be aware in good time of pricing criteria to be applied, thereby also putting at risk the regulatory predictability the company itself supports.

¹⁵ And approving the report of the public consultation and prior hearing to which the DD on the methodology for forecasting the traffic of the basket of non-reserved services for the 2018-2020 triennium had been submitted.

In the specific case of the Complaint, the amendment of the methodology and sources to be considered to estimate inflation would result in a higher annual price change, however the same reasoning for not amending this point of the decision - as it was stabilised - would have been followed by ANACOM in case the update would result in a lower annual price change. In fact, in a background where ANACOM, in its decision of 05.11.2018, amended inflation estimates (whether the respective calculation methodology and sources considered were also included), and this amendment resulted in a lower price change, CTT could argue that this amendment and/or update was not legitimate, as it altered a methodology already stabilized in the decision of 12.07.2018.

In addition, it should also be referred that:

- a) Aspects challenged by CTT in points 24 to 34 of the Complaint - regarding the fact that the inflation figure provided for in the SBR is, in its perspective, *the most relevant source of information for the purpose of the calculation of the maximum annual price change*, and that allegedly there is *an inconsistency* between the inflation figures to be considered for the purpose of the definition of the price change rule and the inflation figure to be considered each year to implement the defined rule -, were not contested by CTT in its assessment of the DD of 11.01.2018, nor were they complained against in the scope of the Pricing Determination of 12.07.2018, further to CTT's notification of 18.07.2018.

It should be noted that in the scope of the Pricing Determination, ANACOM merely updated the inflation estimates taken into consideration in the DD of 11.01.2018, not altering the methodology and sources considered that had been set out in the DD. On the other hand, CTT did not present any proposal on the sources to be considered for the purpose of inflation estimates, nor on the methodology to be followed to establish the inflation change estimate or on the price change formula, so as to safeguard the risk that the SBR2019 provided for a higher or lower inflation figure than the one estimated by ANACOM.

After having been notified of the decision of 12.07.2018, CTT could have claimed that the inflation estimate figure had been set in its final form, or that it was relevant to take into consideration the figure of estimates provided for in the SBR, and not other estimates that were considered, thereby requesting the update of this (inflation) estimate in the scope of the decision, still ongoing, of the methodology for forecasting

the traffic of the basket of non-reserved services for 2018-2020, **which the company failed to do**. CTT failed also to make any reference to this aspect when it assessed the DD on the methodology for forecasting the traffic of the basket of non-reserved services.

- b) In the Pricing Determination, ANACOM, taking into account the range of sources provided for in the DD of 11.01.2018 that preceded it, updated inflation estimates disclosed by sources considered in the methodology followed to calculate the inflation change estimate in the 2018-2020 period, taking into account the latest data disclosed by those sources by the date of approval of that determination (12.07.2018)¹⁶. It was not necessary for CTT to request this update, nor did this company question estimates that were used when it assessed the DD of 11.01.2018.
- c) If ANACOM had covered all factors to be considered in the establishment of the universal postal service pricing criteria on 12.07.2018 and the decision had reached its final form on that date, the fact that the inflation estimate in 2019, indicated in the SBR2019 of October 2018, was disclosed in the meantime could not have been used, nor can it now, to question ANACOM's decision.
- d) After the update of inflation estimates, in the scope of the Pricing Determination, approved on 12.07.2018, the same sources have also updated inflation estimates, and new data from other indicators (such as for example new cost data) will also be available, however the decision cannot be constantly "reopened" in order to take them all into consideration, otherwise it would hardly be possible to reach a final decision in good time.

Moreover, by complaining against the use of new inflation data and not of other indicators, CTT is not being consistent.

- e) As referred earlier, the Pricing Determination, approved on 12.07.2018, left open only the methodology for forecasting the traffic of the basket of non-reserved services for 2018-2020, which was later approved by the determination of 05.11.2018.

¹⁶ As explicitly referred in the "Report of the public consultation and prior hearing on the draft decision concerning universal postal service pricing criteria for the 2018-2020 period", of 12.07.2018, which is an integral part of the Pricing Determination, in page 36, on point "3.4 Annual price change of the basket of non-reserved services", in page 44 on point "3.6 Rules that apply to reserved services" and in page 58 on point "4. Conclusion".

All aspects presented by CTT on inflation are not relevant as far as the determination of 05.11.2018, which approved that methodology, is concerned.

Likewise, all new traffic data which became available in the meantime between the Pricing Determination and the determination that approved the methodology for forecasting the traffic of the basket of non-reserved services, do not affect the inflation expected for 2018-2020.

Moreover, as regards the issue left open by the Pricing Determination, ANACOM used the most recent traffic data available at the time of the decision (05.11.2018), namely traffic data for the 3rd quarter of 2018, which were reported by CTT to ANACOM on 31.10.2018.

Lastly, as regards the reference made by CTT (in points 35 to 38 of the Complaint) to the fact that the use of the most recent inflation forecasts had already been requested by ANACOM to CTT, presenting as example what is referred in the scope of the submission of the universal postal service pricing proposal for 2016¹⁷, it is stressed that:

- a) This shows yet again that ANACOM considers, in principle, that the most recent available data should be used, in each moment, to determine the inflation figure - which ANACOM did, it should be highlighted, in the decision of 12.07.2018, when the Authority defined, in its final form, the estimate of inflation figures to be considered for the purpose of the definition of the price change formula in the 2018-2020 period;
- b) On the other hand, attention must be drawn to the fact that the referred situation is different than the one under consideration here: in that case, the implementation of a rule (formula) that had already been defined (by determination of ANACOM on 21.11.2014) was at stake, namely the implementation of the price change to be applied in 2016. In this case, the definition of the price change rule (formula) itself is under consideration, and it necessarily takes into account data available at the time of its establishment, that is, 12.07.2018;
- c) In that specific case, at the time the price proposal for 2016 was submitted, by letter sent by CTT on 17.11.2015, the SBR for 2016 was not yet available, having become available only in February 2016. As such, to replace it, CTT used, on its own initiative,

¹⁷ In fax ANACOM-S098806/2015, of 23.12.2015.

the inflation figure forecast by BdP for 2016, published in its Economic Bulletin in June 2015, the most recent data available at the time;

- d) In the scope of the analysis of the pricing proposal for 2016, and as referred by CTT, on 23.12.2015, ANACOM clarified that, as BdP had published on 09.12.2015, in its Economic Bulletin of December 2015, a more recent forecast for the referred inflation figure, this should be the figure used;
- e) This clarification was the result, first of all, of provisions in force at the time for the universal postal service pricing criteria to be applied in the 2015-17 period, which determined that it was incumbent on ANACOM to clarify the figure of inflation to be considered (for the purpose of the pricing proposal) in case of any (technical) difficulties in the calculation of that figure, which was the case, given that the SBR for 2016 had not been yet published. As such, while criteria now set out for the 2018-2020 already explicitly determine the alternative to be resorted to in case the SBR is not available, which is the inflation figure forecast by BdP, included in its most recently published Economic Bulletin, at the date the pricing proposal for 2016 was submitted, this was not yet defined in rules in force for the 2015-2017 period, which led ANACOM to clarify the matter, as referred earlier.

This was also the result, secondly, of the fact that the pricing proposal was not in compliance with the pricing criteria in force (as may easily be understood from the communication submitted by ANACOM to CTT on that date, which CTT attach as annex 2 to its Complaint), thus it would require a redrafting, which in fact did take place¹⁸. As such, on that occasion also, ANACOM clarified (in the scope and under the provision of pricing criteria in force at the time) that a more recent forecast for the inflation figure should be used.

It follows from the above that, contrary to what was stated by CTT in point 10 of the Complaint, nothing illegal affects the Pricing Determination.

¹⁸ That pricing proposal was redrafted by CTT on 08.01.2016 (further to ANACOM's communication of 23.12.2015) and again on 15.01.2016 (further to a new communication from ANACOM, this time dated 13.01.2016).

5. Conclusion

In the light of the above and whereas:

- a) The Complaint submitted by CTT is restricted to the methodology followed to calculate estimates of the inflation change for the purpose of the universal postal service pricing criteria for the 2018-2020 period;
- b) Except for the methodology for forecasting the traffic of the basket of non-reserved services, the universal postal service pricing criteria for the 2018-2020 period and, in this scope, the methodology followed to calculate estimates of the inflation change to be considered for the purpose, were the subject-matter of the decision approved by ANACOM on 12.07.2018, which is already stabilised in the legal order, as far as these matters are concerned;
- c) When the DD on the methodology for forecasting the traffic of the basket of non-reserved services for the 2018-2020 triennium was submitted to a prior hearing and public consultation, it was clearly highlighted that only this subject-matter would be decided on by ANACOM, the rest of the Pricing Determination remaining unchanged;
- d) The decision that, on 05.11.2018, approved the methodology for forecasting the traffic of the basket of non-reserved services for the 2018-2020 triennium, like the DD that preceded it, does not address nor does it cover any forecasts or estimates for the inflation figure change, nor the methodology followed to calculate the inflation change estimate, which were dealt with and decided in their final form in ANACOM's decision of 12.07.2018;
- e) Any complaint against the inflation figure change estimates and the methodology followed to establish them, to be considered in the scope of the establishment of the universal postal service pricing criteria for the 2018-2020 period, should have been addressed in reaction to the decision taken by ANACOM on 12.07.2018, that defined that figure and that methodology;
- f) The 15 day-deadline to complain against the decision that, on 12.07.2018, established the inflation figure change, including the methodology followed to calculate the inflation change estimate, to be considered in the scope of the establishment of the universal postal service pricing criteria for the 2018-2020 period, has long expired;

- g) A constant change in the methodology, or a constant update of estimates or figures to be considered, would call into question the predictability of applicable rules, which is contrary to CTT's own interests,

ANACOM reaches the inevitable conclusion that CTT's Complaint of 30.11.2018 was submitted out of time.

Therefore, the Management Board of ANACOM, under point q) of paragraph 1 of article 26 of its Statutes, approved by Decree-Law No. 39/2015, of 16 March, and bearing in mind grounds indicated above, where it was found that the complaint was submitted out of time, determines, under paragraph 2 of article 192, and taking into account paragraph 3 of article 191, both of the Administrative Procedure Code, not to examine the submitted request.