

**Decision on the request submitted by CTT - Correios de Portugal, S.A., pursuant to article 6 of the Universal Postal Service Quality Convention, of 10 July 2008, to deduct records of non-priority mail and priority mail directly affected by national airspace closures between 8 and 12 May 2010**

1. Pursuant to clause 8, paragraph 1b) of the Universal Postal Service Concession Contract, of 1 September 2000, as amended on 9 September 2003 and 26 July 2006 (Concession Contract), CTT – Correios de Portugal, S.A. (CTT) must provide the universal postal service ensuring its interoperability, continuity, availability and quality, the latter being specifically provided in accordance with parameters and levels of quality set out in the Universal Postal Service Quality Convention (Quality Convention)<sup>1</sup>, concluded between ICP - Autoridade Nacional das Comunicações (ICP-ANACOM) and CTT on 10 July 2008, under clause 12 of the referred Concession Contract and article 8, paragraph 5, of Law no. 112/99 of 26 July (Basic Law)<sup>2</sup>, as amended by Decree-Law no. 116/2003<sup>3</sup> of 12 June.
2. The Quality Convention lays down in article 6, paragraph 1, that “should any *force majeure* or phenomenon situation take place, the burst and evolution of which are clearly outside the control of CTT, and have an impact on the quality of service provided by CTT, the latter may request, for the purpose of calculation of QSI [...], the deduction of records for the concerned periods of time and geographic flows”.
3. Paragraph 2 of article 6 establishes that *force majeure* or phenomenon situations mentioned in paragraph 1 mean “[...] unpredictable or insurmountable natural events and/or facts attributable to third parties, that are triggered, evolve, or the effects of which occur regardless of CTT’s will and ability to control, such as war, 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 mail items.”
4. The request for deduction activation must be submitted in writing by CTT, together with the respective grounds, within 60 days at the most from the date on which the events have taken place, according to paragraph 4 of article 6.
5. Paragraph 5 of article 6 establishes that the decision as to whether CTT’s request should be taken into consideration is incumbent upon ICP-ANACOM, and must be notified to CTT within 30 days at the most from the date on which such request is received. In case ICP-ANACOM decides to reject this request, the Authority must duly justify its decision. Regardless of the request for deduction, CTT must undertake to try to find the best alternatives for the period the situations mentioned in paragraphs 1 and 2 of article 6 take place.
6. It is a well-known fact, having received wide media coverage, that the activity of the Eyjafjallajökull Icelandic volcano caused atmospheric disruptions which led to national airspace closures between 8 and 12 May 2010 as well as to the cancellation of several flights between national airports.
7. CTT informed that the referred restrictions seriously affected, between 8 and 12 May 2010, the regular conditions of CAM mail air transport, that is, flows between the

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<sup>1</sup> <http://www.anacom.pt/render.jsp?contentId=980404>

<sup>2</sup> <http://www.anacom.pt/render.jsp?contentId=980037>

<sup>3</sup> <http://www.anacom.pt/render.jsp?contentId=980055>

Mainland and Autonomous Regions of the Azores and Madeira, between the two Autonomous Regions and within each Autonomous Region, causing mail delivery delays which affected the performance of quality of service<sup>4</sup>.

8. According to CTT, given the transit times of the different services, the restrictions during that period and for those flows affected the regular quality performance of ordinary mail deliveries between 5 and 12 May, inclusive, and of priority mail deliveries between 6 and 12 May.
9. CTT informed also that as initially it was unknown for how long the national airspace would be closed, the alternative of using sea shipping transport was considered, but deemed to be unfeasible, in view of the fact that, according to CTT, main shipping operators to the Azores and Madeira showed an insufficient ability for immediate additional transport, and given travel times of regular lines, it was foreseeable that its use in the ensuing days would imply that mail would be delivered after the target date for national airspace reopening. Having the national airspace been opened, efforts were made, according to CTT, to use all available capacity of regular air transport, in order to catch up as soon as possible with delays incurred.
10. In the light of the above, given the nature and causes of the situation occurred in early May, deemed by CTT to be a *force majeure* situation, the burst and effects of which were clearly outside its control, the company, by letter No 52680 of 09.07.2010, requested ICP – ANACOM, pursuant to and for the purposes of article 6 of the Quality Convention, to deduct, for calculation of QSI for May 2010, the records of ordinary mail between 5 and 12 May, inclusive, and of priority mail between 6 and 12 May, inclusive, directly affected by the effects of national airspace closures between 8 and 12 May caused by volcanic ash clouds, for all CAM flows.
11. By letter CTT No 53012 of 02.08.2010, submitted to ICP-ANACOM in response to this Authority's request for additional information, CTT specified that flows for which the deduction is requested concern CAM flows, except for deliveries within each island, that is:
  - a. flow from the Mainland to the Autonomous Region of the Azores and vice-versa;
  - b. flow from the Mainland to the Autonomous Region of Madeira and vice-versa;
  - c. flow from the Autonomous Region of the Azores to the Autonomous Region of Madeira and vice-versa;
  - d. flow between islands within each Autonomous Region.
12. Therefore, considering:
  - a. information conveyed by CTT by letter No 52680, of 09.07.2010, and No 53012, of 02.08.2010;
  - b. provisions laid down in the above-mentioned paragraphs 1 and 2 of the Quality Convention;
  - c. that between 8 and 12 May 2010 the national airspace was closed due to the activity of the Eyjafjallajökull Icelandic volcano, causing the cancellation of several flights between national airports;
  - d. that the restrictions which took place influenced ordinary and priority mail deliveries in flows between the Mainland and Autonomous Regions of the Azores

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<sup>4</sup> CTT informed that between 8 and 12 May 261 CAM flights were cancelled, which were intended to deliver both ordinary and priority mail.

and Madeira, between the two Autonomous Regions and within each Autonomous Region, causing mail delivery delays which affected the performance of quality of service;

- e. that facts alleged by CTT qualify as an unforeseen situation, a natural event, provided for in paragraph 2 of article 6 of the Quality Convention, unpredictable or insurmountable, which was triggered, evolved, or the effects of which occurred regardless of CTT's will and ability to control, impairing the regular conditions of clearance, sorting, transport and distribution of ordinary and priority mail items between the Mainland and Autonomous Regions of the Azores and Madeira, between the two Autonomous Regions and within each Autonomous Region;
- f. that given the ordinary mail standard service - mail delivery up to 3 working days after clearance - the referred facts were able to affect ordinary mail deliveries between 5 and 12 May, and that given CAM priority mail standard service - mail delivery up to 2 working days after clearance - the referred facts were able to affect priority mail deliveries between 6 and 12 May;
- g. that pursuant to article 10 of the Quality Convention, CTT must send to ICP-ANACOM quarterly reports, by the end of the month following the end of the quarter, with the evolution of values achieved for QSI, so that such values may be followed up and monitored,

the Management Board of ICP-ANACOM, in the exercise of powers conferred under article 6, paragraph 1 b), d), h) and n), and article 26 b), all of its Statutes, approved by Decree-Law no. 309/2001, of 7 December, and pursuant to paragraph 5 of article 6 of the Universal Postal Service Quality Convention, of 10 July 2008, hereby determines as follows:

1. To grant the deduction of records of ordinary mail and priority mail directly affected by the effects of national airspace closures caused by volcanic ash clouds, which is limited to the delivery of ordinary mail between 5 and 12 May, inclusive, and of priority mail between 6 and 12 May, inclusive, covering the following mail flows:
  - from the Mainland to the Autonomous Region of the Azores and vice-versa;
  - from the Mainland to the Autonomous Region of Madeira and vice-versa;
  - from the Autonomous Region of the Azores to the Autonomous Region of Madeira and vice-versa;
  - between islands within each Autonomous Region.
2. To order CTT, when calculating QSI figures for the whole year of 2010, pursuant to article 10 of the Quality Convention, to submit to ICP-ANACOM annual QSI figures achieved with and without the deduction of the referred records.
3. To order CTT to submit to ANACOM, within fifteen working days:
  - Pursuant to the referred article 10, QSI figures obtained for the 2<sup>nd</sup> quarter of 2010, with and without the deduction of the referred records;
  - Detailed information on each of the records deducted by CTT in the calculation of the respective indicators, namely: mail item identifying code, expected and actual dispatch date, mail item origin and destination, distribution date, transit time and validity of registration for the purpose of calculating the respective quality of service indicator.