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Determination of 9.11.2006

**Determination of ICP-ANACOM on the request submitted by CTT, under article 6 of the Universal Postal Service Quality Convention, of 21 April 2006, to deduct records directly affected by the strike of the company's workers of 28/04/06, for the purposes of the calculation of quality of service indicators defined in the referred Universal Postal Service Quality Convention**

1. It is incumbent upon CTT – Correios de Portugal, S.A. (CTT), pursuant to clause 8, paragraph 1, point b) of the Concession Contract for Universal Postal Service, of 1 September 2000, amended on 9 September 2003 and on 26 July 2006 (Concession), to provide the universal postal service ensuring its inter-operability, continuity, availability and quality. The latter requirement must be provided according namely to the parameters and levels of service set out in the Universal Postal Service Quality Convention (Quality Convention), entered into by ICP– National Communications Authority (ICP-ANACOM) and CTT on 21 April 2006.
2. Article 6, paragraph 1, of the Quality Convention provides as follows: “*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 the quality of service indicators (QSI) comprised (...) hereto, the deduction of the inputs for the concerned periods of time and geographic flows*”.
3. CTT requested of ANACOM, through letter no. 50768, of 14/07/06, under the referred paragraph 1 of article 6 of the Quality Convention, and on the grounds mentioned in the referred letter, the deduction of records directly affected by the strike carried out by the company's workers on 28/04/06, for the purposes of the calculation of quality of service indicators defined in the referred Quality Convention.
4. The decision as to whether the request referred to in the preceding paragraph should be taken into consideration is incumbent upon ICP-ANACOM, pursuant to paragraph 3 of the mentioned article 6, and where this request is rejected, the respective grounds must be provided. Regardless of the request for deduction, CTT undertake, under the mentioned article 6 of the Quality Convention, to try to find the best alternatives for the period the situations mentioned in paragraph 1 of article 6 take place.

5. By determination of 24/08/06, ICP-ANACOM determined to grant CTT a prior hearing, pursuant to articles 100 and 101 of the Code of Administrative Procedure, within a ten working-day time limit, on its intention to reject the submitted request.
6. In summary, ICP-ANACOM considered that circumstances described by CTT did not fall within the category of force majeure or phenomenon situations, whose burst and evolution are clearly outside the control of CTT, and which have an impact on the quality of service provided by CTT, and thus such circumstances do not merit consideration for the purposes of the activation of the deduction mechanism provided for in paragraph 1 of article 6 of the Quality Convention.
7. CTT submitted its position on the draft decision issued by ICP-ANACOM through letter no. 50927, of 08/09/06.
8. Therefore:
  - i) Having regard to the information notified by CTT through the mentioned letters no. 50768 and 50927, respectively on 14/07/06 and 08/09/06;
  - ii) Having regard to the grounds presented in the prior hearing report, presented in annex, which is now approved and which is an integral part hereof;
  - iii) Taking into consideration that:
    - a) Paragraph 1 of article 6 of the Quality Convention establishes, as mentioned above, 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 the quality of service indicators (QSI) comprised (...) hereto, the deduction of the inputs for the concerned periods of time and geographic flows”*;
    - b) According to academic writing, force majeure situations are those unpredictable or insurmountable events and/or facts, the effects of which occur regardless of the will of the agent, that is, such effects cannot be attributed to him, comprising natural events or action attributable to third parties, such as major natural disasters, fire, acts of war, subversion, alteration of public order and economic blockage;
    - c) The labour dispute circumstances notified by CTT, including the strike of 28/04/06, do not constitute an unpredictable or insurmountable event unconnected with the will of CTT, nor an action attributable to third parties;
    - d) CTT’s enterprise unit must be regarded as a whole, human resources included, and as such, labour movements of workers are not unconnected therewith;

- e) Thus, the labour disputes circumstances notified by CTT do not amount to a force majeure situation;
- f) The labour dispute circumstances notified by CTT are not outside the scope of CTT, and as such the circumstances notified by this operator do not qualify as a phenomenon situation whose burst and evolution are clearly outside the control of CTT;
- g) The referred facts (i) started on the basis of strikes substantiated by the opposition of representative associations of employers to the review of the Works Agreement and (ii) they are not in any way new to CTT (it should be observed that in 2003 there were labour conflicts as well), thus they may not be considered as phenomenon situations whose burst and evolution are clearly outside the control of CTT;
- h) The human resources engaged in the provision of the universal postal service integrate the public postal network provided for in clause 5 of the Concession, being incumbent upon CTT to establish, maintain and develop this network in appropriate conditions to the effective provision of the universal postal service. It follows that, without prejudice to the merit of alternative measures taken by CTT during the period of labour conflicts, this operator should have adopted the necessary measures to ensure the quality of the universal postal service, namely the levels of quality of service established in the Quality Convention;
- i) The circumstances of labour conflict notified by this operator do not qualify thus as a phenomenon situations, whose burst and evolution are clearly outside the control of CTT;
- j) According to the standards of the European Committee for Standardization (CEN) on the measurement of the transit time of mail items, days of strike or industrial disputes should not be disregarded for the purpose of quality of service measurement;
- k) In this scope, attention must be drawn to standard EN 13850:2002 (concerning the measurement of the transit time of end-to-end services for single piece priority mail and first class mail), which CTT is bound to implement (according to fax ANACOM-S00130/2003, of 06/01/03), which, as referred, establishes in point 4.2.2 thereof that the days of strike or industrial disputes should not be disregarded for the purpose of quality of service measurement;
- l) The same provision is established, for instance, by standard EN 14508:2003 (on measurement of the transit time of end-to-end services for single piece non-priority mail and second class mail) and by technical specification TS 14773:2004 (on measurement of loss and substantial delay of priority and first class single

piece mail using a survey of test letters) which refer to the provisions of the mentioned standard 13850:2002;

- m) Contrary to the arguments of CTT, the application of mentioned CEN standards is not limited *per se* to effects occurring occasionally;
- n) The Quality Convention in force from 2001-2003 explicitly excluded “*any labour or operational disruption which represents a purely internal situation of CTT [...]*” from the list of events which justified the activation of the deduction mechanism mentioned above;
- o) In the course of the Quality Convention negotiations which took place between 2004-2005, CTT presented to ICP-ANACOM a draft wording for article 6, which included “[...] *general or sector strikes or any other events of the same nature which disrupt the normal conditions of collection, handling, transport and distribution of postal items*” among force majeure situations which justifies the activation of the referred deduction mechanism, wording which was rejected;
- p) The Quality Convention currently in force, entered into on 21 April 2006, maintained the wording of article 6 of the 2004-2005 Quality Convention;
- q) According to paragraph 1 of article 5 of Law no. 102/99, of 26 July (Basic Law), as amended by Decree-Law no. 116/2003, of 12 June, it is incumbent upon the State to guarantee the existence and availability of universal service, understood to be a permanent offer of postal services of a specific quality, provided throughout national territory at prices accessible to all users, aiming to satisfy the communication needs of the population and those of economic and social activities;
- r) As a follow-up to the legal regime established by the Basic law, the State granted to CTT the concession of the universal postal service provision;
- s) As mentioned above, it is incumbent upon CTT, pursuant to clause 8, paragraph 1, point b) of referred Concession, to provide the universal postal service ensuring its inter-operability, continuity, availability and quality. The latter requirement must be provided namely according to the parameters and levels of service set out in the Universal Postal Service Quality Convention entered into with ICP-ANACOM (under clause 12 of the Concession and article 8, paragraph 5, of the Basic Law);
- t) Services subject to the referred Quality Convention correspond to a large extent services to a limited choice on the part f users, on account of the fact that the provision of such services is

reserved to CTT and that there is currently no other operator providing a service which could be deemed as an alternative, in terms of quality and coverage, to the universal service provided by CTT;

- u) It is important to ensure that the provision of the universal service is carried out within appropriate standards of quality, and that, in situations where users are affected by lower degree of quality of service, they should benefit, in contrast, from lower prices, as both the Quality Convention and the Universal Postal Service Price Convention, of 21 April 2006, provide for,

the Board of Directors of ICP-ANACOM, pursuant to paragraph 3 of article 6 of the Universal Postal Service Quality Convention, of 21 April 2006, and to articles 6, paragraph 1, point n) and 26, point b), of the Statutes approved by Decree-Law no. 309/2001 of 7 December, hereby determines to reject the request submitted by CTT to deduct records directly affected by the strike of the company's workers on 28/04/06, for the purposes of the calculation of quality of service indicators defined in the Universal Postal Service Quality Convention, of 21 April 2006.