

**Decision on the request put by CTT, pursuant to article 6 of the Convénio de Qualidade (Quality Convention) of the Universal Postal Service, to deduct records covering distribution of *correio normal* (non-priority mail) and *correio azul* (priority mail) affected by the general strike of held by CTT employees on 7 June 2013**

1. The Convénio de Qualidade (Quality Convention) of the universal postal service, concluded on 10 July 2008 between ICP - Autoridade Nacional de Comunicações (ICP-ANACOM) and CTT - Correios de Portugal, S.A. (CTT), provisionally in force under article 7 of article 57 of Law no. 17/2012 of 26 April, establishes, on an annual basis, the parameters and minimum levels of quality of the universal postal service which CTT undertakes to provide<sup>1</sup>.
2. It is set out in paragraph 1 of article 6 of the Convénio de Qualidade (Quality Convention) 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) [...], the deduction of the inputs for the concerned periods of time and geographic flows".
3. Paragraph 2 of the same article sets out that force majeure or phenomenon situations mentioned in the paragraph 1 "[...] shall be deemed to 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 postal items".
4. Paragraph 3 sets out that "without prejudice to [paragraphs 1 and 2 of the same article], where up to the full liberalisation of the postal sector in Portugal CTT registers internal work disruptions that impair the quality of service provided, the latter may request, for the

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<sup>1</sup> See [Universal postal service quality convention](#).

purpose of calculating the QSI [...], the deduction of the inputs for the concerned periods of time and geographic flows".

5. In accordance with paragraph 4 of article 6, the request for deduction activation, referred to in the preceding paragraphs, must be submitted in writing by CTT, together with the grounds therefor, within 60 [working] days at the most from the date the events have taken place.
6. Under paragraph 5 of the same article, the decision whether or not to give consideration to CTT's request is incumbent upon ICP-ANACOM, which decision is to be notified to CTT no later than 30 [working] days subsequent to the date of the request's receipt and, in the event that the request is rejected, is to be reasoned. Irrespective of the presentation of a deduction request, CTT is bound to find the best alternatives during the occurrence of such situations as referred to in paragraphs 1 and 2 of this same article 6.
7. By letter of 08.08.2013 (received by ICP-ANACOM on 09.08.2013), CTT reported that a general strike of CTT employees had taken place on 07.06.2013, convened by various trade unions representing the company's employees; the strike was called in protest at the privatisation of CTT as, according to CTT, announced and decided by the Portuguese Government.
8. According to CTT, notwithstanding prior measures adopted to minimize the expected impact of this strike action on the postal service and the maintenance of these measures on the days following the strike, the stoppage caused by the strike resulted in delays in the routing and distribution of postal items affecting the performance of quality of service during the month of June 2013.
9. Also according to CTT, the stoppage had its most severe impact on the quality of *correio azul* (priority mail), given the associated transit time, and to a lesser extent, on the quality of *correio normal* (non-priority mail).
10. Invoking the cause and nature of the situation which occurred on 07.06.2013 (general strike by employees), which it qualified as an anomalous situation and as a situation having causes and effects which are clearly outside its control, CTT submitted a request to ICP-

ANACOM, under the terms of and for the purposes of article 6 of the Convénio de Qualidade (Quality Convention), seeking its consideration as a situation of force majeure for the purpose of calculating the QSI of June 2013.

11. In this context, CTT sought the deduction of records covering the distribution of *correio normal* (non-priority mail) and *correio azul* (priority mail) on all national routes for the following periods:

- a) *Correio normal* (non-priority mail) sent from 4 to 7 June (inclusive) on all routes;
- b) *Correio azul* (priority mail) sent on 5 and 6 June, mainland routes;
- c) *Correio azul* (priority mail) sent from 5 to 7 June (inclusive) on CAM routes (Mainland, Azores and Madeira).

12. Accordingly:

- a) Considering the information provided by CTT, by letter dated 08.08.2013;
- b) Considering the provisions laid down in the above paragraphs 1, 2 and 3 of article 6 of the Convénio de Qualidade (Quality Convention);
- c) Whereas:
  - i. In the statement issued by the trade unions, which CTT attached to its letter of 08.08.2013, the call to strike was issued in protest at the destruction of the public postal network and at cuts to the daily distribution of mail to citizens and, in particular, at the announced privatisation of CTT;
  - ii. The doctrinal definition of force majeure associates these situations with the concept of being unpredictable and insurmountable;
  - iii. The strike by CTT employees was foreseeable, even to the extent that, in submitting its request, CTT attached a copy of a statement on the strike called by sector trade unions for the 07.06.2013; meanwhile, notwithstanding the merits of alternative measures implemented (particularly in the context of the undertaking set out at the

end of paragraph 5 of article 6 of the Convénio de Qualidade (Convention for Quality)), CTT reports that, anticipating the possible effects of the announced strike, it put a plan of contingency measures into place between 3 and 12 June 2013, i.e. including in the period preceding the occurrence of the strike;

- iv. As such, contrary to the classification given by CTT, the strike by CTT employees cannot be considered a situation of force majeure [see paragraph 1 of article 6 of the Convénio de Qualidade (Quality Convention)];
- v. Likewise, the strike reported by CTT cannot be regarded as a phenomenon "the burst and evolution of which are clearly outside the control of CTT" [see paragraph 1 of article 6 of the Convénio de qualidade (Quality Convention)];
- vi. Indeed, the strike is a disturbance that is internal to CTT, even if motivated by an external factor - the decision to privatize the company (see, for example, strike notice sent to CTT by the Sindicato Nacional dos Trabalhadores dos Correios e Telecomunicações (National Union of Postal and Telecommunications Workers) and made available on the union's website - [http://www.sntct.pt/img/com\\_ctt/an0001798.pdf](http://www.sntct.pt/img/com_ctt/an0001798.pdf));
- vii. Since the situation in question does not entail conflicts that go beyond the scope of CTT, the situation of conflict reported constitutes a "phenomenon" that is internal to CTT, whereby it cannot be considered as a phenomenon, the burst and evolution of which are clearly outside the control of the company, given also that the company is deemed as a business unit constituting a whole that includes its human resources, so that the labour actions taken by its staff are not disassociated from it.
- viii. The situation invoked by CTT, the strike held by employees of the company on 07.06.2013, does not, therefore, constitute an event of force majeure or phenomenon situation, the burst and evolution of which are clearly outside the control of CTT, and is therefore not eligible for consideration for the purposes of the deduction mechanism provided for in paragraph 1 of article 6 of the Convénio de Qualidade (Quality Convention).

- ix. According to the standards of the European Committee for Standardization (CEN) concerning the measurement of mail transit time, in particular Standard EN 13850 (on methods for measuring the end-to-end transit time of domestic and cross-border single piece priority mail), which CTT is bound to implement, days of non-operation and days affected by strike or industrial disputes should not be disregarded when measuring quality of service; the same rule states that strikes occurring within the sphere of influence of the provider are not to be considered as force majeure;
- x. The request put by CTT is inadmissible under paragraph 3 of article 6 of the Convénio de Qualidade (Quality Convention); under this paragraph, in the event that CTT registers internal work disruptions that impair the quality of service provided, the inputs for the concerned periods of time and geographic flows may be deducted, where occurring prior to accomplishment of the full liberalisation of the postal sector in Portugal;
- xi. It is clear that the situation described by the operator constitutes an internal labour disruption that impairs the quality of service provided by CTT;
- xii. However, the situation described by CTT occurred subsequent to the full liberalisation of the postal sector in Portugal, as was accomplished with the entry into force of the Lei Postal (Postal Law), which establishes the legal regime governing the provision of postal services in full competition in the national territory, as well as international services having origin or destination in the national territory, transposing Directive no. 2008/6/EC of the European Parliament and of the Council of 20 February 2008 into national law.
- xiii. The Lei Postal (Postal Law), which, as mentioned, transposes Directive no. 2008/6/EC of the European Parliament and of the Council of 20 February 2008 into national law, accomplished the full liberalisation of the postal sector in Portugal as from 27.04.2012;
- xiv. Under the Lei Postal (Postal Law), on grounds of public order and security or public interest, certain activities and services may be reserved to determined postal

services providers [see point b) of paragraph 2 of article 3 of Lei Postal [Postal law]]. This possibility is foreseen, from its inception, in Directive no. 97/67/EC of 15 December 1997, and was not amended under Directive no. 2008/6/EC;

- xv. Bearing in mind the nature and grounds for reserving provision of the activities listed in point b) of paragraph 2 of article 3 of the Lei Postal (Postal Law), as stems from the provisions of article 8 of Directive 97/67/EC, and as mentioned above, the full liberalisation of the postal sector is to be considered as having been accomplished upon the entry into force of the Lei Postal (Postal Law) on 27.04.2013;
- xvi. Provision of the universal service shall ensure fulfilment of the appropriate quality standards, in particular as regards routing times, regularity and reliability of services; [see point b) of paragraph 1 of article 11 of the Lei Postal (Postal Law)], as well as continuity of service, save for situations of force majeure [see point d) of paragraph 1 of article 11 of the Lei Postal (Postal Law)],

d) And also taking into account the response given by CTT at the prior hearing, conducted pursuant to articles 100 and 101 of the Código de Procedimento Administrativo (Administrative Proceeding Code), the analysis of which is set out in the "Report of the prior hearing on the request put by CTT, pursuant to article 6 of the Convénio de Qualidade (Quality Convention) of the Universal Postal Service to deduct records covering distribution of *correio normal* (non-priority mail) and *correio azul* (priority mail) affected by the general strike held on 7 June 2013", as approved by the Management Board simultaneously with and as an integral part of the present determination,

in exercising the powers conferred upon it by points b), d), h) and n) of paragraph 1 of article 6 and by point b) of article 26 of its Statutes, as approved by Decree-Law no. 309/2001 of 7 December, and as under paragraph 1 of article 8 of Law no. 17/2012 of 26 July, and pursuant to paragraph 5 of article 6 of the Convénio de Qualidade (Quality Convention) of the universal postal service of 10 July 2008, with the amendments as introduced on 10 September 2010, the Management Board of ICP-ANACOM determines to deny the request put by CTT to deduct records directly affected by the strike of CTT

employees held on 07.06.2013 for purposes of calculating the quality of service indicators defined in said Convention.