



STATEMENT ON FORCE MAJEURE EXEMPTIONS TO THE STANDARDS OF SERVICE

The Fair Trading Commission (“the Commission”) regulates the Quality of Service (QoS) provided by Barbados’ major utility service providers, namely - the Barbados Light & Power Company Limited (BL&P), the Barbados Water Authority (BWA) and Cable & Wireless (Barbados) Limited (C&W), via a Standards of Service framework. This framework holds the utilities to minimum standards of service provision, and, in some cases, breaches of Standards may lead to either compensation for individual customers, or penalties.

These Standards and associated penalties, are however, applicable to the utilities in the course of normal business operations, where a reasonable level of duty and care is expected. Consequently, there is consideration given to exemptions from the Standards of Service in cases where breaches of the Standards are caused by conditions outside of the utilities’ control. This type of condition is referred to as ‘*Force Majeure*’. Black’s Law Dictionary (2009) defines *Force Majeure*¹ as:

“An event or effect that can be neither anticipated nor controlled; esp., an unexpected event that prevents someone from doing or completing something that he or she had agreed or officially planned to do. The term includes both acts of nature (e.g., floods and hurricanes) and acts of people (e.g., riot, strikes and wars).”

It is not necessarily automatic that the Standards are held in abeyance simply in the presence of a Force Majeure event or condition. Reliance on Force Majeure, requires that the service provider proves that the situation rendered meeting the Standards impossible.

¹ Bryan Garner, Black’s Law Dictionary (United States: Thomson Reuters, 2009), 718.

However, in the case of the passage of a hurricane, as with Elsa, it would be reasonable to expect that Force Majeure would apply and as such the affected utilities would be exempt from the requirements to pay compensation under the Standards of Service. This exemption notwithstanding, the service providers are not allowed free reign and are still expected to restore service within the shortest possible timeframe.