

Press and Information Division

**PRESS RELEASE No 64/03**

24 July 2003

Judgment of the Court of Justice in Case C-280/00

*Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft  
Altmark GmbH*

**THE COURT RULES THAT FINANCIAL SUPPORT WHICH MERELY  
REPRESENTS COMPENSATION FOR PUBLIC SERVICE OBLIGATIONS  
IMPOSED BY THE MEMBER STATES DOES NOT HAVE THE  
CHARACTERISTICS OF STATE AID**

*However, for such compensation not to be classified as State aid in a specific case, four  
conditions must be satisfied.*

A Community regulation on public service obligations<sup>1</sup> aims to eliminate disparities resulting from obligations inherent in the concept of a public service imposed on land transport undertakings by Member States which are liable to cause substantial distortion to conditions of competition. It is therefore necessary to terminate public service obligations, although it may, however, be essential to maintain them in certain cases in order to ensure the provision of adequate transport services.

The German legislature originally made express use of the option allowed by that Community regulation of excluding its application to urban, suburban and regional transport. Since 1996 German law expressly provides that local and regional transport services are subject to the regulation in certain situations.

In 1990 Altmark Trans obtained licences and subsidies for passenger transport by bus in the Landkreis (district) of Stendal. In 1994 the German authorities renewed Altmark's licences and rejected an application for licences by Nahverkehrsgesellschaft Altmark. The latter

---

1 Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, as amended by Council Regulation (EEC) No 1893/91 of 20 June 1991.

company brought proceedings before the German courts, claiming that Altmark Trans was not financially viable because it could not have survived without public subsidies, and the licences were therefore unlawful.

The Bundesverwaltungsgericht (Federal Administrative Court), as the final court of appeal, made a reference to the Court of Justice, as it wished to know:

- whether the subsidies granted to Altmark Trans by the Landkreis of Stendal are State aid prohibited by the EC Treaty, and
- whether the German authorities are entitled to provide that regional transport services operated commercially are not subject to the 1969 regulation on "public service obligations".

The first question:

The Court of Justice pointed out that, according to settled case-law, for a State measure to be classifiable as State aid within the meaning of the EC Treaty, it must be capable of being regarded as an "*advantage*" conferred on the recipient undertaking which that undertaking would not have obtained under normal market conditions.

**The Court held that there is no such "advantage" where a State financial measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations.**

**However, for such compensation to escape classification as State aid in a particular case, four conditions must be satisfied.**

**First**, the recipient undertaking *must actually have public service obligations to discharge* and those obligations must be *clearly defined*.

**Second**, the parameters on the basis of which the compensation is calculated must be *established in advance in an objective and transparent manner*.

**Third**, the compensation *cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit*.

**Fourth**, where the undertaking is not chosen in a public procurement procedure, the level of compensation must be determined by a comparison with an analysis of the costs which a typical transport undertaking would incur (taking into account the receipts and a reasonable profit from discharging the obligations).

**Only if those four conditions are satisfied may it be considered that an undertaking has not enjoyed a real financial "advantage" which would have the effect of putting it in a more favourable competitive position than the undertakings competing with it, so that it is not therefore State aid within the meaning of the EC Treaty.**

The second question:

However, it must be emphasised that, **in the present case**, the German court will have to examine whether the subsidies in question were granted in conformity with the rules of the EC Treaty on State aid only *if it concludes that the Community regulation concerned does not apply in Germany*. In other words, if that Community regulation applies in the present case, there is no need to have recourse to the general provisions of the EC Treaty.

The Court held that the German legislature may, in principle, make partial application of the exception provided for in the Community regulation for urban, suburban and regional transport, since by so doing it comes closer to the objectives pursued by that regulation. However, a Member State may make partial application of that exception only **where the principle of legal certainty is duly complied with**, which means that the German law must delimit clearly the use made of that exception, so as to make it possible to determine the situations in which the exception applies and those in which the Community regulation applies.

*Unofficial document for media use only, not binding on the Court of Justice*

*Available in Danish, Dutch, English, Finnish, French, German, Italian, Spanish and Swedish.*

*For the full text of the judgment, please consult our website*  
[www.curia.eu.int](http://www.curia.eu.int)

*at about 3 pm today*

*For further information please contact Christopher Fretwell:*

*Tel: (00 352) 4303 3355; Fax: (00 352) 4303 2731.*

*Pictures of the delivery of the judgment are available on "Europe by Satellite",  
European Commission, Press and Information Service, L-2920 Luxembourg,  
Tel (00 352) 4301 35177, Fax (00 352) 4301 35249,  
or B-1049 Brussels, Tel (00 32) 2 29 64106, Fax (00 32) 2 29 65956 or (00 32) 2 301280.*