

Case C-280/00

Altmark Trans GmbH and Regierungspräsidium Magdeburg

v

Nahverkehrsgesellschaft Altmark GmbH

(Reference for a preliminary ruling from the Bundesverwaltungsgericht
(Germany))

(Regulation (EEC) No 1191/69 — Operation of urban, suburban and regional
scheduled transport services — Public subsidies — Concept of State aid —
Compensation for discharging public service obligations)

Opinion of Advocate General Léger delivered on 19 March 2002	1-7751
Opinion of Advocate General Léger delivered on 14 January 2003	1-7788
Judgment of the Court, 24 July 2003	1-7810

Summary of the Judgment

1. *Transport — Action by the Member States concerning public service obligations — Regulation No 1191/69 — Derogation authorised for undertakings operating urban, suburban or regional scheduled transport services — Extent of the option available to Member States — Obligation to delimit clearly the use made of that option — Observance of legal certainty*
(Council Regulation No 1191/69, Art. 1(1), second subpara.)
2. *State aid — Effect on trade between Member States — Adverse effect on competition — Exclusion by the Commission of the transport sector from the ‘de minimis rule’*
(EC Treaty, Art. 92(1) (now, after amendment, Art. 87(1) EC); Commission Regulation No 69/2001; Commission Notice 96/C 68/06)
3. *State aid — Definition — Measures intended to offset the cost of public service tasks assumed by an undertaking — Not included — Conditions — Clearly defined public service obligations — Establishment in an objective and transparent manner of the parameters used to calculate the compensation — Compensation limited to covering costs — Determination of the compensation, where the undertaking is not chosen by a public procurement procedure, on the basis of an analysis of the costs of a typical undertaking in the sector concerned*
(EC Treaty, Art. 92(1) (now, after amendment, Art. 87(1) EC))
4. *Transport — Aid for transport — Application of Article 77 of the Treaty (now Article 73 EC) — Limitation to cases covered by secondary Community legislation*
(EC Treaty, Art. 77 (now Art. 73 EC); Council Regulations Nos 1191/69 and 1107/70)

1. Regulation No 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, and more particularly the second subparagraph of Article 1(1) thereof, must be interpreted as allowing a Member State not to apply that regulation to the operation of urban, suburban or regional scheduled transport services which necessarily depend on public subsidies, and to limit its application to cases where the provision of adequate transport is not otherwise possible, provided however that the principle of legal certainty is duly

observed, which means that the national legislation must clearly delimit the use made of that option of derogation, so as to make it possible to determine the situations in which the derogation applies and those in which the regulation applies.

(see paras 58, 64, operative part 1)

2. The condition for the application of Article 92(1) of the Treaty (now, after amendment, Article 87(1) EC), namely that the aid must be capable of affecting trade between Member States, does not depend on the local or regional character of the transport services supplied or on the scale of the field of activity concerned.

relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected.

(see paras 77-78, 80-82, operative part 2)

It is not impossible that a public subsidy granted to an undertaking which provides only local or regional transport services and does not provide any transport services outside its State of origin may none the less have an effect on trade between Member States, since, where a Member State grants a public subsidy to an undertaking, the supply of transport services by that undertaking may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of providing their transport services in the market in that Member State. Moreover, the Commission notice on *de minimis* aid, as its fourth paragraph states, does not concern transport. Similarly, Regulation No 69/2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid, in accordance with the third recital in the preamble and Article 1(a), does not apply to that sector. Finally, there is no threshold or percentage below which it may be considered that trade between Member States is not affected. The relatively small amount of aid or the

3. Where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial advantage and the measure thus does not have the effect of putting them in a more favourable competitive position than the undertakings competing with them, such a measure is not caught by Article 92(1) of the Treaty (now, after amendment, Article 87(1) EC).

However, for such compensation to escape classification as State aid in a particular case, a number of conditions must be satisfied. First, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. Second, the parameters on the basis of which the compensation will be calculated must be established in advance in

an objective and transparent manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings. Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations. Compliance with such a condition is essential to ensure that the recipient undertaking is not given any advantage which distorts or threatens to distort competition by strengthening that undertaking's competitive position. Fourth, where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

4. Following the adoption of Regulation No 1107/70 on the granting of aids for transport by rail, road and inland waterway, Member States are no longer authorised to rely on Article 77 of the Treaty (now Article 73 EC), which provides that aids which meet the needs of coordination of transport or represent reimbursement for the discharge of certain obligations inherent in the concept of a public service are compatible with the Treaty, outside the cases referred to in secondary Community legislation.

So, to the extent that Regulation No 1191/69 on action by the Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway does not apply and the subsidies at issue fall within Article 92(1) of the Treaty (now, after amendment, Article 87(1) EC), Regulation No 1107/70 lists exhaustively the circumstances in which the authorities of the Member States may grant aids under Article 77 of the Treaty.

(see paras 87-93, operative part 2)

(see paras 101, 107-108)