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EU Court Curbs Europe's Ability to Regulate State Aid

July 24 (Bloomberg) -- Europe's supreme court ruled that payments made by governments to companies that provide essential services shouldn't be considered as state aid, making it more difficult for regulators to prevent illegal support. European governments have pumped billions of euros into companies such as Poste Italiane SpA, Electricite de France SA and Landesbank NRW to provide services deemed necessary – such as serving remote or low-income communities -- that are unlikely to be offered by a private company.

“This decision will set the stage for how the commission addresses state aid in all cases involving public companies,” said Thomas Jestaedt, a lawyer with Lovells Boesebeck Droste in Brussels. Rivals argue that companies use funds earmarked for essential services to offset costs related to businesses in which they compete. The Court of Justice ruling that money provided for such services shouldn't count as state aid and therefore doesn't need to be reported to and approved by Brussels-based regulators makes it harder to stop abuses of the aid.

The court said that as long as services being compensated were clearly defined and covered the costs of providing the service, including a “reasonable profit,” money paid by governments should no longer be considered state aid. That removes the onus on governments to notify European Commission regulators of the payments. The Free and Fair Post Initiative, a Brussels-based lobby representing postal users such as mail-order houses as well as competitors of public postal operators, said it would have preferred the court designated such funds as state aid so they would have to be justified to commission regulators.

Four Conditions

The court's ruling specifies four conditions that must be satisfied for compensation not to be classified as state aid and that indicates recognition of the problems facing private companies, said Philippe Bodson, the FFPI's president. “The reality is that postal operators are still allowed to get funding to compensate for lack of efficiency and to fund investments in service unrelated to the universal service obligation,” he said.

The case that was considered by the Luxembourg court concerned public bus transport service in the German district of Stendal. District authorities issued transport licenses to Altmark, a bus company, in 1994 and gave it subsidies to cover the costs of discharging its public-service obligations. A competing bus company, NVGA, took the case to the German courts, claiming the subsidies paid to Altmark violated state-aid rules. The German Federal Administrative Court asked the Court of Justice for a ruling on the nature of those subsidies.

‘Reasonable Precedent’

At stake was whether such funds represent a payment for the performance of a public function or are a transfer of public money outside of a regular contract and therefore state aid. Earlier disagreements among court advisers and conflicting rulings by different judges prompted the supreme court to invite governments from all 15 member states to submit their views. The commission is “not unhappy with the ruling,” Tilman Lueder, a spokesman, told journalists in Brussels. “It sets a reasonable precedent for how to deal with state compensation for public services.” Including the four conditions “sets out a good framework which would ensure that there are no distortions of competition,” he added said. “We are confident that member states would take their responsibilities seriously. “Even with today's decision, the commission will continue to monitor cases in which aid is being illegally diverted to support

competitive businesses, Lueder said. As the court has decided that aid needn't be reported to the commission, the EU's executive arm will find it tougher to monitor whether the payments are being misused and will instead have to rely on complaints by rivals.

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