

Dow Jones Newswire
EU Court Tightens Lid On Govt Public Service Spending
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BRUSSELS -(Dow Jones)- Europe's highest court Thursday unveiled new measures aimed at limiting government handouts but disappointed private postal and transport operators and broadcasters who wanted an even tougher ruling.

Judges at the Luxembourg-based European Court of Justice laid out strict criteria that E.U. governments and local authorities must meet before handing out contracts for services such as bus routes and mail delivery. From now on, companies receiving state cash must only receive enough funds to cover their costs.

The European Union Commission welcomed the ruling as part of a campaign to stamp out market-distorting subsidies. More companies now need to hold public tenders to meet the new criteria, and disappointed rivals will have more ammunition to lodge complaints.

Judges are "forcing member states to be very precise in their payments," said E.U. spokesman Tilman Lueder.

But private-sector operators were less sanguine. They wanted European judges to make government spending - even spending on services that companies provide by law - conditional on prior approval by the regulators.

Philippe Bodson of the Free and Fair Postal Initiative said he's concerned about enforcement of the court's judgment. He wanted companies to be "obliged to validate their requests for subsidies before receiving them."

Lawyers also cast doubt on the ruling, saying it left competitors to face tough hurdles before bringing complaints. Complaining won't be "easy because competitors don't have a clear view on the cost structure," said Filip Ragolle of law firm Bird & Bird.

Thursday's case dates back to 1994, when the German city of Stendal renewed 18 licenses for bus company **Altmark** Trans to service local routes. A rival bus company, Nahverkehrsgesellschaft **Altmark** GmbH, complained that Stendal was overpaying and argued that the aid was illegal because it was keeping a company in business that otherwise would have gone broke. A court in Sachsen-Anhalt agreed and revoked **Altmark's** licenses.

Altmark appealed and a German federal court referred the case to the European Court of Justice for a definitive opinion.

On Thursday, the court rejected the need for prior approval and sent the case back to Germany for judges there to make a final ruling on the facts. But it slapped four separate conditions on companies receiving such aid.

Recipients need to show a public service mandate, a clear calculation of their costs, and that they are only receiving a "reasonable" profit. Crucially, where there is no public tender, companies must show that compensation compares with what a "typical" private company would receive for the same services.

That's a big change, say other lawyers. In the past, aid recipients often justified compensation by measuring themselves against inefficient state monopolies. In the future, recipients must benchmark themselves against an efficient company.

"Companies such as public-service broadcasters and postal companies" should watch out, said Marc Hansen of law firm Latham & Watkins. "Bringing complaints against them has just become a lot easier."

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